TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 238

H. A. LOTT, ET AL., PETITIONERS,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 15, 1960
CERTIORARI GRANTED OCTOBER 10, 1960

SUPREME COURT OF THE UNITED STATES

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[fol. i1]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

Holding Sessions at Houston

UNITED STATES OF AMERICA,

VS.

RICHARD A. FARNSWORTH, SR., LEE BLOCKER, H. A. LOTT, ALAN FARNSWORTH, and LORN D. FRAZIER.

No. 13,298 Criminal.

CAPTION

Be It Remembered: That in the above entitled and numbered cause, lately pending in said Court, in which Final Judgments and Sentences were rendered at the Regular February 1959 Term of said Court, to-wit: On the 19th day of June A. D., 1959, the Honorable Allen B. Hannay, Judge of the United States District Court for the Southern District of Texas, presiding, the following proceedings were had, to-wit:

IN UNITED STATES DISTRICT COURT

INDICTMENT

The Grand Jury Charges:

That in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, one Richard A. Farnsworth, Sr., Chairman of the Board of Directors of Farnsworth & Company, Inc., Lee Blocker, Treasurer of Farnsworth & Chambers Company, Inc., H. A. Lott, Vice President of Farnsworth & Chambers Company, Inc., Alan Farnsworth, Purchasing Agent and Employee of Farnsworth & Chambers Company, Inc., and Lorn D. Frazier, Vice President of Farnsworth & Chambers

Company, Inc., all hereinafter called defendants and all respectively in the year 1951 were employed by Farnsworth & Chambers Company, Inc., a corporation engaged [fol. 12] in the general contracting business in the State of Texas by virtue of a permit issued by the State of Texas, did wilfully and knowingly attempt to evade and defeat a large part of the taxes due and owing by Farnsworth & Chambers Company, Inc., to the United States of America for the calendar year 1951, by falsifying and altering, and causing to be falsified and altered, invoices, books and records, memorandums, and other documents of Farnsworth & Chambers Company, Inc., at Houston, Texas, and approving and causing to be approved false invoices and documents at Houston, Texas, and concealing and causing to be concealed assets of Farnsworth & Chambers Company, Inc., at Houston, Texas, and diverting and causing to be diverted net income of Farnsworth & Chambers Company, Inc., at Houston, Texas, and concealing and causing to be concealed income of Farnsworth & Chambers Company, Inc., at Houston, Texas, and preparing and causing to be prepared, and mailing and causing to be mailed at Houston, Texas, a false and fraudulent corporate income tax return on behalf of Farnsworth & Chambers Company, Inc., at Houston, Texas for the calendar year of 1951, which was filed on or about April 16, 1952 with the Collector of Internal Revenue for the First Internal Revenue District at Austin, Texas, wherein it was stated that the net income of the said corporation for the said calendar year of 1951 was the sum of $399,135.98, and that the total amount of tax due thereon was the sum of $194,482.66, whereas, as they then and there well knew the net income of the corporation for the said calendar year of 1951 was the sum of $763,599.62 upon which said net income the corporation owed to the United States of America a total tax of $482,278.96, in violation of Section [fol. 13] 145(b) of the Internal Revenue Code of 1939: 26 U.S.C. 145(b).

Second Count.

That in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, one

Richard A. Farnsworth, Sr., Chairman of the Board of Directors of Farnsworth & Chambers Company, Inc., Lee Blocker, Treasurer of Farnsworth & Chambers Company, Inc., H. A. Lott, Vice President of Farnsworth & Chambers Company, Inc., Alan Farnsworth, Purchasing Agent and Employee of Farnsworth & Chambers Company, Inc., and Lorn D. Frazier, Vice President of Farnsworth & Chambers Company, Inc., all hereinafter called defendants and all respectively in the year 1952 were employed by Farnsworth & Chambers Company, Inc., a corporation engaged in the general contracting business in the State of Texas by virtue of a permit issued by the State of Texas, did wilfully and knowingly attempt to evade and defeat a large part of the taxes due and owing by Farnsworth & Chambers Company, Inc., to the United States of America for the calendar year 1952, by falsifying and altering, and causing to be falsified and altered, invoices, books and records, memorandums, and other documents of Farnsworth & Chambers Company, Inc., at Houston, Texas, and approving and causing to be approved false invoices and documents at Houston, Texas, and concealing and causing to be concealed assets of Farnsworth & Chambers Company, Inc., at Houston, Texas, and diverting and causing to be diverted net income of Farnsworth & Chambers Company, Inc., at Houston, Texas, and concealing and [fol. 14] causing to be concealed income of Farnsworth & Chambers Company, Inc., at Houston, Texas, and preparing and causing to be prepared, and mailing and causing to be mailed at Houston, Texas, a false and fraudulent corporate income tax return on behalf of Farnsworth & Chambers Company, Inc., at Houston, Texas for the calendar year of 1952, which was filed on or about May 12, 1953 with the District Director of Internal Revenue for the Austin District of the Internal Revenue Service at Austin, Texas, wherein it was stated that the net income of the said corporation for the said calendar year of 1952 was the sum of $410,937.87, and that the total amount of tax due thereon was the sum of $207,135.40, whereas, as they then and there well knew the net income of the corporation for the said calendar year of 1952 was the sum of $495,-

528.77, upon which said net income the corporation owed to the United States of America a total tax of $251,122.66, in violation of Section 145(b) of the Internal Revenue Code of 1939: 26 U.S.C. 145(b).

Third Count.

That in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, one Richard A. Farnsworth, Sr., Chairman of the Board of Directors of Farnsworth & Chambers Company, Inc., Lee Blocker, Treasurer of Farnsworth & Chambers Company, Inc., H. A. Lott, Vice President of Farnsworth & Chambers Company, Inc., Alan Farnsworth, Purchasing Agent and Employee of Farnsworth & Chambers Company, Inc., and Lorn D. Frazier, Vice President of Farnsworth & Chambers Company, Inc., all hereinafter called defendants and all respectively in the year 1953 were employed by Farns- [fol. 15] worth & Chambers Company, Inc., a corporation engaged in the general contracting business in the State of Texas by virtue of a permit issued by the State of Texas, did wilfully and knowingly attempt to evade and defeat a large part of the taxes due and owing by Farnsworth & Chambers Company, Inc., to the United States of America for the calendar year 1953, by falsifying and altering, and causing to be falsified and altered, invoices, books and records, memorandums, and other documents of Farnsworth & Chambers Company, Inc., at Houston, Texas, and approving and causing to be approved false invoices and documents at Houston, Texas, and concealing and causing to be concealed assets of Farnsworth & Chambers Company, Inc., at Houston, Texas, and diverting and causing to be diverted net income of Farnsworth & Chambers Company, Inc., at Houston, Texas, and concealing and causing to be concealed income of Farnsworth & Chambers Company, Inc., at Houston, Texas, and preparing and causing to be prepared, and mailing and causing to be mailed at Houston, Texas, a false and fraudulent corporate income tax return on behalf of Farnsworth & Chambers Company, Inc., at Houston, Texas for the calendar year of 1953, which was filed on or about May 24, 1954 with the District Director of Internal Revenue

for the Austin District of the Internal Revenue Service at Austin, Texas, wherein it was stated that the net income of the said corporation for the said calendar year of 1953 was the sum of $179,628.93, and that the total amount of tax due thereon was the sum of $87,907.04, whereas, as they then and there well knew the net income of the corporation for the said calendar year of 1953 was the sum of $362,929.90, upon which said net income the corporation owed to the United States of America a total [fol. 16] tax of $183,223.55, in violation of Section 145(b) of the Internal Revenue Code of 1939: 26 U.S.C. 145(b).

Fourth Count.

That in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, one Richard A. Farnsworth, Sr., Chairman of the Board of Directors of Farnsworth & Chambers Company, Inc., Lee Blocker, Treasurer of Farnsworth & Chambers Company, Inc., H. A. Lott, Vice President of Farnsworth & Chambers Company, Inc., Alan Farnsworth, Purchasing Agent and Employee of Farnsworth & Chambers Company, Inc., and Lorn D. Frazier, Vice President of Farnsworth & Chambers Company, Inc., all hereinafter called defendants and and all respectively in the year 1954 were employed by Farnsworth & Chambers Company, Inc., a corporation engaged in the general contracting business in the State of Texas by virtue of a permit issued by the State of Texas, did wilfully and knowingly attempt to evade and defeat a large part of the taxes due and owing by Farnsworth & Chambers Company, Inc., to the United States of America for the calendar year 1954, by falsifying and altering, and causing to be falsified and altered, invoices, books and records, memorandums, and other documents of Farnsworth & Chambers Company, Inc , at Houston, Texas, and approving and causing to be approved false invoices and documents at Houston, Texas, and concealing and causing to be concealed assets of Farnsworth & Chambers Company, Inc., at Houston, Texas, and diverting and causing to be diverted net income of Farnsworth & Chambers Company, Inc., at Houston, Texas, and concealing and causing

to be concealed income of Farnsworth & Chambers Com-
[fol. 17] pany, Inc., at Houston, Texas, and preparing and causing to be prepared, and mailing and causing to be mailed at Houston, Texas, a false and fraudulent corporate income tax return on behalf of Farnsworth & Chambers Company, Inc., at Houston, Texas for the calendar year of 1954, which was filed on or about March 14, 1955 with the District Director of Internal Revenue for the Austin District of the Internal Revenue Service at Austin, Texas, wherein it was stated that the net income of the said corporation for the said calendar year of 1954 was the sum of $282,441.03, and that the total amount of tax due thereon was the sum of $135,797.53, whereas, as they then and there well knew the net income of the corporation for the said calendar year of 1954 was the sum of $406,898.80, upon which said net income the corporation owed to the United States of America a total tax of $200,515.57, in violation of Section 7201, of the Internal Revenue Code of 1954: 26 U.S.C. 7201.

Fifth Count.

That on or about the 1st day of January of 1950, the exact date to the Grand Jurors unknown and continuously thereafter up unto and including the 14th day of March of 1955, in the Southern District of Texas, Houston Division and within the jurisdiction of this Court and other Judicial Districts of the United States of America, Richard A. Farnsworth, Sr., Lee Blocker, H. A. Lott, Lorn D. Frazier, and Alan Farnsworth, all of Houston, Texas, all hereinafter called defendants, did unlawfully, knowingly, wilfully and feloniously conspire, combine, confederate and agree together, with each other and Dunbar N. Chambers, deceased, not indicated herein, and divers other persons
[fol. 18] whose names are to the Grand Jurors unknown to violate Section 145(b) of the Internal Revenue Code of 1939, Section 145(b), Title 26, United States Code and Section 7201 of the Internal Revenue Code of 1954, Section 7201, Title 26, United States Code, to-wit: To wilfully attempt to evade and defeat a large part of the income taxes due and owing to the United States of America

by Farnsworth & Chambers Company, Inc., for the calendar years of 1951, 1952, 1953 and 1954 under circumstances and by the means and other manner following:

That at all times material herein:

1. Farnsworth & Chambers Company, Inc., a corporation engaged in the business of general contracting work in the State of Texas, as permitted by the State of Texas, with its principal office in Texas situated at Houston, Texas;

2. Richard A. Farnsworth, Sr., was Chairman of the Board of Directors of Farnsworth & Chambers Company, Inc.;

3. Lee Blocker was Treasurer of Farnsworth & Chambers Company, Inc.;

4. H. A. Lott was Vice President of Farnsworth & Chambers Company, Inc.;

5. Lorn D. Frazier was Vice President of Farnsworth & Chambers Company, Inc., and

6. Alan Farnsworth was Purchasing Agent and Employee of Farnsworth & Chambers Company, Inc.

[fol. 19] A. It was part of said conspiracy to falsify and alter books and records, memorandums, bills and receipts and documents of Farnsworth & Chambers Company, Inc.

B. It was further a part of the conspiracy to approve falsified invoices, bills, memorandums and documents for payment by Farnsworth & Chambers Company, Inc.

C. It was further a part of the conspiracy that defendants would conceal purchases of assets of Farnsworth & Chambers Company, Inc., by representing that payments for such assets were for rentals, repair expenses, parts expenses and materials used in construction work by Farnsworth & Chambers Company, Inc.

D. It was further a part of the conspiracy to alter and delete the true records of the corporation for the purpose of concealing the true net income of the corporation.

That the Grand Jurors further charge that at the times and at the places herein named, in furtherance of the object, design and purpose of such conspiracy, the defendants hereinafter named did do and perform the following overt acts:

Overt Acts.

1. Each of the overt acts alleged in the preceding four counts of this indictment, in the respective dates and places alleged therein.

[fol. 20] 2. That on or about April 16, 1952, Richard A. Farnsworth, Sr., Lee Blocker, H. A. Lott, Alan Farnsworth and Lorn D. Frazier filed and caused to be filed a corporate income tax return on behalf of Farnsworth & Chambers Company, Inc., with the Collector of Internal Revenue for the First Internal Revenue District at Austin, Texas.

3. That on or about May 12, 1953, Richard A. Farnsworth, Sr., Lee Blocker, H. A. Lott, Alan Farnsworth and Lorn D. Frazier filed and caused to be filed a corporate income tax return on behalf of Farnsworth & Chambers Company, Inc., with the District Director of Internal Revenue for the Austin District of the Internal Revenue Service at Austin, Texas.

4. That on or about May 24, 1954, Richard A. Farnsworth, Sr., Lee Blocker, H. A. Lott, Alan Farnsworth and Lorn D. Frazier filed and caused to be filed a corporate income tax return on behalf of Farnsworth & Chambers Company, Inc., with the District Director of Internal Revenue for the Austin District of the Internal Revenue Service at Austin, Texas.

5. That on or about March 14, 1955, Richard A. Farnsworth, Sr., Lee Blocker, H. A. Lott, Alan Farnsworth and Lorn D. Frazier filed and caused to be filed a corporate income tax return on behalf of Farnsworth & Chambers Company, Inc., with the District Director of Internal Revenue for the Austin District of the Internal Revenue Service at Austin, Texas.

6. On or about June 5, 1951, Richard A. Farnsworth, Sr., approved an invoice labeled "Requisition No. 12" showing Al Bubeck to be payee.

[fol. 21] 7. On or about December 31, 1951, Richard A. Farnsworth, Sr., in Houston, Texas, approved Voucher No. 47071 payable to Acme Airco No. 1 for one Amana freezer.

8. On or about January 24, 1953 in Houston, Texas, Richard A. Farnsworth, Sr., approved Voucher No. 70860 for work on a residence.

9. On or about May 4, 1954, Richard A. Farnsworth, Sr., at Houston, Texas, approved an invoice supporting Voucher No. 07490.

10. On or about April 28, 1952, Lorn D. Frazier approved an alleged invoice from Sim D. Brown.

11. On or about November 1, 1953, Lorn D. Frazier approved an alleged invoice from Herman Knox Furniture Company.

12. On or about November 25, 1952, Lorn D. Frazier approved an invoice from B. A. Hoffman.

13. On or about November 29, 1950, H. A. Lott approved Invoice No. 31701 from the National Sash and Door Company.

14. On or about May 15, 1951, H. A. Lott approved Invoice No. 10338 from the Coastal Equipment Company, Inc.

15. On or about February 25, 1952, H. A. Lott approved an alleged invoice from Sim D. Brown.

[fol. 22] 16. On or about September 26, 1953, H. A. Lott approved an invoice from G. V. Robles & Sons.

17. On or about March 31, 1954, H. A. Lott approved an alleged invoice from the Alamo Lumber Company.

18. On or about May 7, 1953, Lee Blocker at Houston, Texas, signed his name to the 1952 Corporation Income

Tax Return as Treasurer of Farnsworth & Chambers Company, Inc.

19. On or about May 10, 1954, Lee Blocker at Houston, Texas, signed his name to the 1953 Corporation Income Tax Return as Treasurer of Farnsworth & Chambers Company, Inc.

20. On or about March 8, 1955, Lee Blocker at Houston, Texas, signed his name to the 1954 Corporation Income Tax Return as Treasurer of Farnsworth & Chambers Company, Inc.

21. On or about November 1, 1950, Lee Blocker approved Invoice No. 3664 alleged to be from the Coastal Equipment Company, Inc.

22. On or about December 31, 1951, Lee Blocker prepared Journal Voucher 654.

23. On or about June 2, 1951, Alan Farnsworth approved an invoice from the Hollywood Overhead Door Co.

24. On or about February 25, 1951, Alan Farnsworth approved a weekly field payroll charged to the Reagan School job.

[fol. 23] 25. On or about May 19, 1953, Alan Farnsworth approved an invoice from the Houston Iron & Steel Company.

26. On or about January 2, 1954, Alan Farnsworth approved an invoice from the Barber, Inc.

That the acts aforesaid were and are in violation of Section 371, Title 18, United States Code.

Ed Helman, Foreman of the Grand Jury.

Fred L. Hartman, Assistant United States Attorney.

FLH:cp

[fol. 24]

IN UNITED STATES DISTRICT COURT

CLERK'S DOCKET ENTRY ON ARRAIGNMENT—
Entered April 24, 1958

All defendants Arraigned, subject to filing their motions (ABH).

All defendants plead Not Guilty. Trial to be set at later date.

Government given 30 days to answer defendants' motions.

[fol. 219]

IN UNITED STATES DISTRICT COURT

BILL OF PARTICULARS—Filed 19 day of July, 1958

Comes Now the United States of America, plaintiff in the above entitled suit and without waiving its objections heretofore filed to all of the above defendants' motions for bill of particulars, but expressly reserving the same, and without prejudice to the Government's filing an amended bill of particulars that may replace this bill in whole or in part, agrees to furnish voluntarily this bill of particulars. This bill is furnished in the interest of further facilitating the trial of the case. The Government herein, realleges, however, that all of the matters listed below are fully within the knowledge of the defendants, their attorneys, their accountants and their business associates. This knowledge is revealed in part in the motions for severance filed by certain defendants.

I.

The Government will rely upon the "specific items" theory of proof and will not resort to the net worth theory of proof. The nature and sources of the primary groups of items is as follows:

II.

The evasion of taxes for the years in question by the defendants and by the means enumerated in the indictment resulted in part from the omission of income by Farnsworth and Chambers, Inc., from its construction and [fol. 220] related activities, including but not limited to building roads, grading ditches, building driveways, building a swimming pool, clearing timber and/or the sale of same—all in the approximate amount of $71,136.00 for the tax years in question.

III.

The evasion of taxes resulted in part from the over statement of construction costs and expenses of Farnsworth and Chambers Company, Inc., by allocation of personal expenditures of all defendants and other corporate executives, both living and deceased, to corporate construction costs and expenses, in the approximate amount of $324,877.00 for the tax years in question.

IV.

The evasion of taxes resulted in part from the concealment of asset acquisitions, by showing them on their books and records as construction costs and expenses of Farnsworth and Chambers Company, Inc.

V.

The evasion of taxes resulted in part from the contion (sic) as construction costs and expenses by Farnsworth and Chambers Company, Inc., of expenditures made by Farnsworth and Chambers Company, Inc., for other corporations in the approximate amount of $525,643.00.

VI.

The evasion of taxes was due in part to the acquisition of corporate assets by Farnsworth and Chambers Com-[fol. 221] pany, Inc., under the subterfuge of paying corporate expenses and construction costs.

Wherefore, premises considered, the United States having voluntarily furnished and stated the above primary specific items, among others, upon which it will rely, it should not be compelled to even further disclose its evidence and proof prior to trial. This for the cogent reasons stated more particularly in its reply to the respective motions of the above defendants.

Respectfully submitted,

William B. Butler, United States Attorney; Fred L. Hartman, Assistant United States Attorney; Newton B. Schwartz, Assistant United States Attorney.

Proof of Service (omitted in printing).

[fol. 223]

IN UNITED STATES DISTRICT COURT

MOTION FOR SUPPLEMENTAL BILL OF PARTICULARS—
Filed 7 day of August, 1958

To the Honorable District Court:

Now Come Lee Blocker and Lorn D. Frazier, defendants, and, pursuant to Rule 7 (f) Federal Rules of Criminal Procedure, request the Court to order the Government to file a supplemental bill of particulars, and in support of this motion respectfully show:

1.

The motion for a bill of particulars previously filed by Lee Blocker and Lorn D. Frazier and the motion for oral argument thereon have not been acted upon by the Court.

2.

An answer to the motion for bill of particulars, which was filed in behalf of the United States of America, asserted that these defendants have no right to particulars to aid them in their defense to the charges in the indict-

ment and to avoid the risk of prosecution twice for the same alleged offense.

3.

In contradiction to these assertions contained in the answer to the bill of particulars, the Government filed a bill of particulars which is in reality a bill of generalities [fol. 224] wholly failing to apprise these defendants of the specific acts of criminal conduct which these defendants will be called upon to defend.

4.

The Bill of Particulars filed by the Government discloses that it intends to prove "specific items" of criminal conduct against the defendants. No adequate defense can be prepared unless these defendants are apprised of what the "specific items" are. Defendants seek not to ascertain the Government's evidence by which it intends to prove the specific items, but identification of these specific transactions.

5.

The motion for bill of particulars previously filed is hereby reasserted and adopted in its entirety in order that these defendants may prepare their defenses, avoid surprises and be apprised of facts, if any, which are relied upon by the Government to support the conclusions alleged in the indictment.

Wherefore, premises considered, these defendants pray that their motions for particulars be in all things granted, and that they have such other relief which justice may require.

Fulbright, Crooker, Freeman, Bates & Jaworski,
By Charles M. Haden, M. S. McCorquodale, Attorneys for Lee Blocker and Lorn D. Frazier.

Bank of the Southwest Building, Houston 2, Texas.

[fol. 346]

IN UNITED STATES DISTRICT COURT

ORDER DENYING DEFENDANTS' MOTIONS—January 26, 1959

"1-26-59: Motion for Bill of Particulars on behalf of Defendants Richard A. Farnsworth, Sr., and Alan Farnsworth Denied and Overruled.

Motion for separate trial on behalf of Defendant H. A. Lott, Denied and Overruled.

[fol. 347] Motion for Bill of Particulars on behalf of Defendant H. A. Lott, Denied and Overruled.

Motion of Defendants Lee Blocker and Lorn D. Frazier to Dismiss Indictment Denied and Overruled.

Motion for Bill of Particulars of Lee Blocker and Lorn D. Frazier Denied and Overruled.

Motion for Severance of Lee Blocker and Lorn D. Frazier Denied and Overruled.

Motion for Supplemental Bill of Particulars of Defendants Lee Blocker and Lorn D. Frazier Denied and Overruled.

Clerk will notify counsel.

(S.) Allen B. Hannay, U. S. District Judge."

[fol. 443]

IN UNITED STATES DISTRICT COURT

Proceedings on Rearraignment of Defendants Lee Blocker and Lorn D. Frazier

APPEARANCES

William B. Butler, Esq., United States Attorney, Post Office Building, Houston, Texas. Fred L. Hartman, Esq., Assistant United States Attorney, Post Office Building, Houston, Texas, For the Government.

John H. Crooker, Esq., Fulbright, Crooker, Freeman, Bates and Jaworski, Bank of the Southwest Building, Houston, Texas, Joe S. Moss, Esq., Esperson Building, Houston, Texas, For the Defendants.

Proceedings

Morning Session—March 17, 1959

COLLOQUY BETWEEN COURT AND COUNSEL RE ENTRY OF PLEAS OF NOLO CONTENDERE

The Court: Judge Crooker, I understand you had some business with the Court this morning?

Mr. Crooker: I think Mr. Moss will address the Court, Your Honor.

[fol. 444] Mr. Moss: May the clients and I approach the bench?

The Court: Certainly.

Mr. Moss: May it please the Court, this gentleman on my left is Lorn Frazier and this is Mr. Lee Blocker. These are the only two defendants in this particular matter that I represent, and each of these gentlemen desire to enter before Your Honor a plea of nolo contendere to each count of the indictment and respectfully request the Court to accept this plea on this occasion.

The Court: What says the Government?

Mr. Butler: If the Court please, the Government objects to the entrance of a plea of nolo contendere.

It is the Government's position, both from instructions from the Attorney General and my own personal feelings, in

a criminal matter of this kind, it is not proper for the defendants to be punished if they are not guilty and if they are guilty they should plead guilty and the nolo plea is a plea that should not be accepted by the Court. They should plead guilty or not guilty.

Mr. Hartman has some additional matters that he would like to say to the Court.

[fol. 445] Mr. Hartman: May it please Your Honor, a nolo plea is rather unique. It is somewhat different from a guilty or not guilty plea. In that connection, these defendants have insisted on their innocence from the outset of this case. A man can change his mind, but ordinarily that requires a confession. In a nolo plea, the man says "I do not wish to contest," which indicates he is in doubt. If that be the case, the ultimate conclusions should be left to a jury to resolve that doubt.

The Court: No, I think that is thoroughly within the discretion of this Court, and I will allow such a plea.

Mr. Hartman: I understand it is a responsibility of the Court, and the origination of such a plea lies with the defendant. That is his privilege. We have no say in the matter. We can only dispose of the case by a plea of guilty or not guilty. There should be some justification for the acceptance of such a plea of nolo contendere, and it should spring from the defendants. It must come from them.

The Court: Is it not true there are other litigations pending in either State or Federal Courts in which the question of guilty would possibly be an admission of some description?

Mr. Hartman: That might be the case, but I think in fairness to the Government defendants should bring that matter before the Court.

[fol. 446] The Court: Hasn't the Fifth Circuit very, very recently said that such a plea is not admissible in either the Federal Court, Civil or Criminal case in a Federal Court?

Mr. Hartman: That being the case and that being the law, it still would not be justification.

The Court: I differ with you on that. I will allow the plea. Will you arraign the defendants?

Mr. Hartman: The Grand Jury charges in Count One that in the Houston Division of the Southern District of

Texas and within the jurisdiction of this Court, one Richard A. Farnsworth, Sr., Chairman of the Board of Directors of Farnsworth & Company, Inc., Lee Blocker, Treasurer of Farnsworth & Chambers Company, Inc., H. A. Lott, Vice President of Farnsworth & Chambers Company, Inc., Alan Farnsworth, Purchasing Agent and Employee of Farnsworth & Chambers Company, Inc., and Lorn D. Frazier, Vice President of Farnsworth & Chambers Company, Inc., all hereinafter called defendants and all respectively in the year 1951 were employed by Farnsworth & Chambers Company, Inc., a corporation engaged in the general contracting business in the State of Texas by virtue of a permit issued by the State of Texas, did wilfully and knowingly attempt to evade and defeat a large part of the taxes due and owing by Farnsworth & Chambers Company, Inc. to the United States of America for the calendar year 1951, by falsifying and altering, and causing to be falsified and altered, in- [fol. 447] voices, books and records, memorandums, and other documents of Farnsworth & Chambers Company, Inc. at Houston, Texas, and approving and causing to be approved false invoices and documents at Houston, Texas, and concealing and causing to be concealed assets of Farnsworth & Chambers Company, Inc. at Houston, Texas, and diverting and causing to be diverted net income of Farnsworth & Chambers Company, Inc. at Houston, Texas, and concealing and causing to be concealed income of Farnsworth & Chambers Company, Inc. at Houston, Texas, and preparing and causing to be prepared, and mailing and causing to be mailed at Houston, Texas, a false and fraudulent corporate income tax return on behalf of Farnsworth & Chambers Company, Inc. at Houston, Texas for the calendar year of 1951, which was filed on or about April 16, 1952 with the Collector of Internal Revenue for the First Internal Revenue District at Austin, Texas, wherein it was stated that the net income of the said corporation for the said calendar year of 1951 was the sum of $399,135.98, and that the total amount of tax due thereon was the sum of $194,482.66, whereas, as they then and there well knew the net income of the corporation for the said calendar year of 1951 was the sum of $763,599.62 upon which said net income the corporation owed to the United States of Amer-

ica a total tax of $482,278.96, in violation of Section 145(b) of the Internal Revenue Code of 1939: 26 U.S.C. 145(b).

Mr. Blocker, how do you plead to Count One of the indictment?

Defendant Blocker: Nolo.

[fol. 448] Mr. Hartman: Mr. Frazier, how do you plead?

Defendant Frazier: Nolo contendere.

Mr. Hartman: Count Two: That in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, one Richard A. Farnsworth, Sr., Chairman of the Board of Directors of Farnsworth & Chambers Company Inc., Lee Blocker, Treasurer of Farnsworth & Chambers Company, Inc., H. A. Lott, Vice President of Farnsworth & Chambers Company, Inc., Alan Farnsworth, Purchasing Agent and Employee of Farnsworth & Chambers Company, Inc., and Lorn D. Frazier, Vice President of Farnsworth & Chambers Company, Inc., all hereinafter called defendants and all respectively in the year 1952 were employed by Farnsworth & Chambers Company, Inc., a corporation engaged in the general contracting business in the State of Texas by virtue of a permit issued by the State of Texas, did wilfully and knowingly attempt to evade and defeat a large part of the taxes due and owing by Farnsworth & Chambers Company, Inc. to the United States of America for the calendar year 1952, by falsifying and altering and causing to be falsified and altered, invoices, books and records, memorandums, and other documents of Farnsworth & Chambers Company, Inc. at Houston, Texas, and approving and causing to be approved false invoices and documents at Houston, Texas, and concealing and causing to be concealed assets of Farnsworth & Chambers Company, Inc. at Houston, Texas, and diverting [fol. 449] and causing to be diverted net income of Farnsworth & Chambers Company, Inc. at Houston, Texas, and concealing and causing to be concealed income of Farnsworth & Chambers Company, Inc. at Houston, Texas, and preparing and causing to be prepared, and mailing and causing to be mailed at Houston, Texas, a false and fraudulent corporate income tax return on behalf of Farnsworth & Chambers Company, Inc. at Houston, Texas for the calendar year of 1952, which was filed on or about May 12,

1953 with the District Director of Internal Revenue for the Austin District of the Internal Revenue Service at Austin, Texas, wherein it was stated that the net income of the said corporation for the said calendar year of 1952 was the sum of $410,937.87, and that the total amount of tax due thereon was the sum of $207,135.40, whereas, as they then and there well knew the net income of the corporation for the said calendar year of 1952 was the sum of $495,528.77, upon which said net income the corporation owed to the United States of America a total tax of $251,122.66, in violation of Section 145(b) of the Internal Revenue Code of 1939: 26 U.S.C. 145(b).

Mr. Blocker, how do you plead to Count Two of the indictment?

Defendant Blocker: Nolo contendere.

Mr. Hartman: Mr. Frazier, how do you plead to Count Two of the indictment?

Defendant Frazier: Nolo contendere.

[fol. 450] Mr. Hartman: Count Three: That in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, one Richard A. Farnsworth, Sr., Chairman of the Board of Directors of Farnsworth & Chambers Company, Inc., Lee Blocker, Treasurer of Farnsworth & Chambers Company, Inc., H. A. Lott, Vice President of Farnsworth & Chambers Company, Inc., Alan Farnsworth, Purchasing Agent and Employee of Farnsworth & Chambers Company, Inc., and Lorn D. Frazier, Vice President of Farnsworth & Chambers Company, Inc., all hereinafter called defendants and all respectively in the year 1953 were employed by Farnsworth & Chambers Company, Inc., a corporation engaged in the general contracting business in the State of Texas by virtue of a permit issued by the State of Texas, did wilfully and knowingly attempt to evade and defeat a large part of the taxes due and owing by Farnsworth & Chambers Company, Inc. to the United States of America for the calendar year 1953, by falsifying and altering, and causing to be falsified and altered, invoices, books and records, memorandums, and other documents of Farnsworth & Chambers Company, Inc. at Houston, Texas, and approving and causing to be approved false invoices and documents at Houston, Texas,

and concealing and causing to be concealed assets of Farnsworth & Chambers Company, Inc. at Houston, Texas, and diverting and causing to be diverted net income of Farnsworth & Chambers Company, Inc. at Houston, Texas, and concealing and causing to be concealed income of Farnsworth & Chambers Company, Inc. at Houston, Texas, and preparing and causing to be prepared, and mailing and causing to be mailed at Houston, Texas, a false and fraudu- [fol. 451] lent corporate income tax return on behalf of Farnsworth & Chambers Company, Inc. at Houston, Texas for the calendar year of 1953, which was filed on or about May 24, 1954 with the District Director of Internal Revenue for the Austin District of the Internal Revenue Service at Austin, Texas, wherein it was stated that the net income of the said corporation for the said calendar year of 1953 was the sum of $179,628.93, and that the total amount of tax due thereon was the sum of $87,907.04, whereas, as they then and there well knew the net income of the corporation for the said calendar year of 1953 was the sum of $362,-929.90, upon which said net income the corporation owed to the United States of America a total tax of $183,223.55, in violation of Section 145(b) of the Internal Revenue Code of 1939: 26 U.S.C. 145(b).

Mr. Blocker, how do you plead to Count Three of the indictment?

Defendant Blocker: Nolo contendere.

Mr. Hartman: Mr. Frazier how do you plead to Count Three of the indictment?

Defendant Frazier: Nolo contendere.

Mr. Hartman: Count Four: That in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, one Richard A. Farnsworth, Sr., Chairman of the Board of Directors of Farnsworth & Chambers Company, Inc., Lee Blocker, Treasurer of Farnsworth [fol. 452] & Chambers Company, Inc., H. A. Lott, Vice President of Farnsworth & Chambers Company, Inc., Alan Farnsworth, Purchasing Agent and Employee of Farnsworth & Chambers, Inc., and Lorn D. Frazier, Vice President of Farnsworth & Chambers Company, Inc., all hereinafter called defendants and all respectively in the year 1954 were employed by Farnsworth & Chambers Company,

Inc., a corporation engaged in the general contracting business in the State of Texas by virtue of a permit issued by the State of Texas, did wilfully and knowingly attempt to evade and defeat a large part of the taxes due and owing by Farnsworth & Chambers Company, Inc. to the United States of America for the calendar year 1954, by falsifying and altering, and causing to be falsified and altered, invoices, books and records, memorandums and other documents of Farnsworth & Chambers Company, Inc. at Houston, Texas, and approving and causing to be approved false invoices and documents at Houston, Texas, and concealing and causing to be concealed assets of Farnsworth & Chambers, Inc. at Houston, Texas, and diverting and causing to be diverted net income of Farnsworth & Chambers Company, Inc. at Houston, Texas, and concealing and causing to be concealed income of Farnsworth & Chambers Company, Inc. at Houston, Texas, and preparing and causing to be prepared, and mailing and causing to be mailed at Houston, Texas, a false and fraudulent corporate income tax return on behalf of Farnsworth & Chambers Company, Inc. at Houston, Texas for the calendar year of 1954, which was filed on or about March 14, 1955 with the District Director of Internal Revenue for the Austin District of the Internal Revenue Service at Austin, Texas, wherein it was stated that the net income [fol. 453] of the said corporation for the said calendar year of 1954 was the sum of $282,441.03, and that the total amount of tax due thereon was the sum of $135,797.53, whereas, as they then and there well knew the net income of the corporation for the said calendar year of 1954 was the sum of $406,898.80, upon which said net income the corporation owed to the United States of America a total tax of $200,515.57, in violation of Section 7201, of the Internal Revenue Code of 1954: 26 U.S.C. 7201.

Mr. Blocker, how do you plead to Count Four of the indictment?

Defendant Blocker: No contendere.

Mr. Hartman: Mr. Frazier, how do you plead to Count Four of the indictment?

Defendant Frazier: Nolo contendere.

Mr. Hartman: Count Five: That on or about the 1st day of January of 1950, the exact date to the Grand Jurors

unknown and continuously thereafter up unto and including the 14th day of March of 1955, in the Southern District of Texas, Houston Division and within the jurisdiction of this Court and other Judicial Districts of the United States of America, Richard A. Farnsworth, Sr., Lee Blocker, H. A. Lott, Lorn D. Frazier and Alan Farnsworth, all of Houston, Texas, all hereinafter called defendants, did unlawfully, knowingly, wilfully and feloniously conspire, combine, confederate and agree together, with each other and Dunbar N. [fol. 454] Chambers, deceased, not indicted herein, and divers other persons whose names are to the Grand Jurors unknown to violate Section 145(b) of the Internal Revenue Code of 1939, Section 145(b), Title 26, United States Code and Section 7201 of the Internal Revenue Code of 1954, Section 7201, Title 26, United States Code, to-wit: To wilfully attempt to evade and defeat a large part of the income taxes due and owing to the United States of America by Farnsworth & Chambers Company, Inc. for the calendar years of 1951, 1952, 1953 and 1954 under circumstances and by the means and other manner following:

That at all times material herein:

1. Farnsworth & Chambers Company, Inc. a corporation engaged in the business of general contracting work in the State of Texas, as permitted by the State of Texas, with its principal office in Texas situated at Houston, Texas;

2. Richard A. Farnsworth, Sr. was Chairman of the Board of Directors of Farnsworth & Chambers Company, Inc.;

3. Lee Blocker was Treasurer of Farnsworth & Chambers Company, Inc.;

4. H. A. Lott was Vice President of Farnsworth & Chambers Company, Inc.;

5. Lorn D. Frazier was Vice President of Farnsworth & Chambers Company, Inc., and

[fol. 455] 6. Alan Farnsworth was Purchasing Agent and Employee of Farnsworth & Chambers Company, Inc.

A. It was part of said conspiracy to falsify and alter books and records, memorandums, bills and receipts and documents of Farnsworth & Chambers Company, Inc.

B. It was further a part of the conspiracy to approve falsified invoices, bills, memorandums and documents for payment by Farnsworth & Chambers Company, Inc.

C. It was further a part of the conspiracy that defendants would conceal purchases of assets of Farnsworth & Chambers Company, Inc. by representing that payments for such assets were for rentals, repair expenses, parts expenses and materials used in construction work by Farnsworth & Chambers Company, Inc.

D. It was further a part of the conspiracy to alter and delete the true records of the corporation for the purpose of concealing the true net income of the corporation.

That the Grand Jurors further charge that at the times and at the places herein named, in furtherance of the object, design and purpose of such conspiracy, the defendants hereinafter named did do and perform the following overt acts:

1. Each of the overt acts alleged in the preceding four counts of this indictment, in the respective dates and places alleged therein.

[fol. 456] 2. That on or about April 16, 1952, Richard A. Farnsworth, Sr., Lee Blocker, H. A. Lott, Alan Farnsworth and Lorn D. Frazier filed and caused to be filed a corporate income tax return on behalf of Farnsworth & Chambers Company, Inc. with the Collector of Internal Revenue for the First Internal Revenue District at Austin, Texas.

3. That on or about May 12, 1953, Richard A. Farnsworth, Sr., Lee Blocker, H. A. Lott, Alan Farnsworth and Lorn D. Frazier filed and caused to be filed a corporate income tax return on behalf of Farnsworth & Chambers Company, Inc. with the District Director of Internal Revenue for the Austin District of the Internal Revenue Service at Austin, Texas.

4. That on or about May 24, 1954, Richard A. Farnsworth, Sr., Lee Blocker, H. A. Lott, Alan Farnsworth and

Lorn D. Frazier filed and caused to be filed a corporate income tax return on behalf of Farnsworth & Chambers Company, Inc., with the District Director of Internal Revenue for the Austin District of the Internal Revenue Service at Austin, Texas.

5. That on or about March 14, 1955, Richard A. Farnsworth, Sr., Lee Blocker, H. A. Lott, Alan Farnsworth and Lorn D. Frazier filed and caused to be filed a corporate income tax return on behalf of Farnsworth & Chambers Company, Inc., with the District Director of Internal Revenue for the Austin District of the Internal Revenue Service at Austin, Texas.

[fol. 457] 6. On or about June 5, 1951, Richard A. Farnsworth, Sr. approved an invoice labeled "Requisition No. 12" showing Al Bubeck to be payee.

7. On or about December 31, 1951, Richard A. Farnsworth, Sr. in Houston, Texas, approved Voucher No. 47071 payable to Acme Airco No. 1 for one Amana freezer.

8. On or about January 24, 1953 in Houston, Texas, Richard A. Farnsworth, Sr. approved Voucher No. 70860 for work on a residence.

9. On or about May 4, 1954, Richard A. Farnsworth, Sr. at Houston, Texas, approved an invoice supporting Voucher No. 07490.

10. On or about April 28, 1952, Lorn D. Frazier approved an alleged invoice from Sim D. Brown.

11. On or about November 1, 1953, Lorn D. Frazier approved an alleged invoice from Herman Knox Furniture Company.

12. On or about November 25, 1952, Lorn D. Frazier approved an invoice from B. A. Hoffman.

13. On or about November 29, 1950, H. A. Lott approved Invoice No. 31701 from the National Sash & Door Company.

14. On or about May 15, 1951, H. A. Lott approved Invoice No. 10338 from the Coastal Equipment Company, Inc.

[fol. 458] 15. On or about February 25, 1952, H. A. Lott approved an alleged invoice from Sim D. Brown.

16. On or about September 26, 1953, H. A. Lott approved an invoice from G. V. Robles & Sons.

17. On or about March 31, 1954, H. A. Lott approved an alleged invoice from the Alamo Lumber Company.

18. On or about May 7, 1953, Lee Blocker at Houston, Texas, signed his name to the 1952 corporation income tax return as Treasurer of Farnsworth & Chambers Company, Inc.

19. On or about May 10, 1954, Lee Blocker at Houston, Texas, signed his name to the 1953 corporation income tax return as Treasurer of Farnsworth & Chambers Company, Inc.

20. On or about March 8, 1955, Lee Blocker at Houston, Texas, signed his name to the 1954 corporation income tax return as Treasurer of Farnsworth & Chambers Company, Inc.

21. On or about November 1, 1950, Lee Blocker approved Invoice No. 3664 alleged to be from the Coastal Equipment Company, Inc.

22. On or about December 31, 1951, Lee Blocker prepared Journal Voucher 654.

23. On or about June 2, 1951, Alan Farnsworth approved an invoice from the Hollywood Overhead Door Company.

[fol. 459] 24. On or about February 25, 1951, Alan Farnsworth approved a weekly field payroll charged to the Reagan School job.

25. On or about May 19, 1953, Alan Farnsworth approved an invoice from the Houston Iron & Steel Company.

26. On or about January 2, 1954, Alan Farnsworth approved an invoice from the Barber, Inc.

That the acts aforesaid were and are in violation of Section 371, Title 18, United States Code.

Mr. Blocker, how do you plead to Count Five of the indictment?

Defendant Blocker: Nolo contendere.

Defendant Frazier: Nolo contendere.

The Court: Each of you defendants has heretofore been furnished a copy of the indictment, and you have gone over it with your counsel, and do you think you understand it?

Defendant Blocker: Yes.

Defendant Frazier: Yes, sir.

[fol. 460] The Court: You understand that it is a serious series of offenses with which you are charged?

Defendant Blocker: Yes.

Defendant Frazier: Yes, sir.

The Court: You enter this plea freely, voluntarily, willingly and on your own responsibility, not that of your lawyers?

Of course, they advise you, but in the last analysis it is entirely up to you gentlemen and no one else.

Defendant Blocker: Yes, sir.

Defendant Frazier: Yes, sir.

The Court: You feel that such plea should have been made or you wouldn't have made it, is that right in each instance?

Defendant Blocker: Yes, sir.

Defendant Frazier: Yes.

[fol. 461] The Court: The word "wilfull" appears throughout the indictment, and that means—I am sure your counsel told you—under the Murdock case "with bad purpose or without ground for believing that one's act is lawful or with careless disregard by the one that has the right to so act." You understand that is the law with reference to the word wilfull, do you not?

Defendant Blocker: Yes, sir.

Defendant Frazier: Yes, sir.

The Court: And lastly, each of you defendants, neither of you defendants have ever been adjudged a person of unsound mind or have ever received a severe head injury or has ever been treated for a nervous or mental disease, is that correct?

Defendant Blocker: Yes, sir, that's correct.

Defendant Frazier: Yes.

The Court: All right. As I stated before, the word voluntarily means without any inducement, such as a promise of leniency direct or indirect, express or implied by anyone connected with the Government or anyone else, whether or not any force was used or threats to cause such a plea to [fol. 462] be made. Is that correct, is it a voluntary plea?

Defendant Blocker: Yes, sir.

Defendant Frazier: Yes, sir.

The Court: I will accept the plea of nolo contendere as to each of these two defendants as to each of the counts in the indictment, and continue the bond as is.

Mr. Barry, if you will arrange with them to make the pre-sentence and when you conclude the pre-sentence, I want it sealed and kept in your custody. No one else will see it until I call for it at the conclusion of the lawsuit. You are not to show it to anyone else, judges, district attorneys, co-workers or anyone.

Mr. Hartman: Your Honor, since the plea has been entered and accepted by the Court, it may be necessary that these people testify in this case.

The Court: That is entirely up to them.

Mr. Hartman: I would like permission to interview these defendants.

The Court: That is up to them and their lawyers. It is not a part of this transaction in any way, shape or form. [fol. 463] Mr. Moss: May I address the Court?

There is one matter that I respectfully invite the Court's attention to. In the arraignment an order was entered by Judge Ingraham and these defendants were given special permission from the Court to attend to the affairs of the company. We were hoping that order may continue and we will produce them at any time Your Honor says.

The Court: That's right. I may have overlooked one thing here. I am sure they understand it is a serious offense and the possible punishment, the maximum that is possible could be as much as five years on each count or $10,000 fine or both, or any part of either, and should it have gone to trial the cost of the prosecution could have been assessed as against Counts One, Two, Three and Four. The conspiracy count, Count Five, could be as much as

five years or $10,000 or both, or any part of either. There is no minimum.

Defendant Blocker: Yes, Your Honor, I understand you have that complete authority.

Defendant Frazier: Yes, sir.

The Court: That is all.

Mr. Moss: May we be excused?

[fol. 464] The Court: Anything else at this time?

Mr. Hartman: Nothing from the Government, sir.

The Court: Court will stand adjourned under the Rules.

IN UNITED STATES DISTRICT

CLERK'S DOCKET ENTRY ON REARRAIGNMENT—Entered March 17, 1959

Rearraignment: Defts. Lee Blocker and Lorn D. Frazier, Plea of Nolo Contendere as to each defendant on all counts. Accepted by Court. Presentence investigation ordered for sentence at conclusion of entire case. Defts. granted permission to leave Southern District of Texas while under bond. (ABH).

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[fol. 465]

IN UNITED STATES DISTRICT COURT

Proceedings on Rearraignment of Defendant, of H. A. Lott

APPEARANCES

William B. Butler, Esq., United States Attorney, Post Office Building, Houston, Texas. Fred L. Hartman, Esq., Assistant United States Attorney, Post Office Building, Houston, Texas. Newton B. Schwartz, Esq., Assistant United States Attorney, Post Office Building, Houston, Texas For the Government.

Denman Moody, Esq. and William V. Ballew, Jr., Esq., Baker, Botts, Andrews & Shepherd, Esperson Building, Houston, Texas, For Defendant Lott.

Proceedings

Morning Session—March 20, 1959

COLLOQUY BETWEEN COURT AND COUNSEL RE ENTRY OF PLEA OF NOLO CONTENDERE

The Court: Mr. Moody, do you have a matter to bring before the Court this morning?

Mr. Moody: I would like to have Mr. H. A. Lott come forward, please, sir.

[fol. 466] Your Honor, I represent Mr. H. A. Lott in this case. Prior to this time he has entered a plea of not guilty in this suit, and Rule 11 of the Federal Rules of Criminal Procedure state that with the permission of the Court and at the Court's discretion he may enter a plea of nolo contendere in the case. It is a usual and proper plea as I understand it, in a case of this kind, and with your permission Mr. H. A. Lott would like to enter this plea.

The Court: What says the Government?

Mr. Butler: The Government's position is the same here as it was with the other defendants, Mr. Blocker and Mr. Frazier, in this case. The defendants should be required to plead either guilty or stand trial. We will not repeat the arguments made, but we do not believe it is a proper or appropriate plea to be entered in this case.

The Court: Mr. Schwartz, do you want to supplement anything?

Mr. Schwartz: No, Your Honor.

The Court: I see no difference with what little I know out this case, any difference between this and the one I previously ruled upon and I will permit the plea. I will permit it if it is willingly and voluntarily made. Were you going to arraign him, Mr. Schwartz?

[fol. 467] Mr. Schwartz: Yes, sir.

The Court: Arraign him.

Mr. Schwartz: The Grand Jury charges on Count One that in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, one Richard A. Farnsworth, Sr., Chairman of the Board of Directors of Farnsworth & Company, Inc., Lee Blocker, Treasurer of

Farnsworth & Chambers Company, Inc., H. A. Lott, Vice President of Farnsworth & Chambers Company, Inc., Alan Farnsworth, Purchasing Agent and Employee of Farnsworth & Chambers Company, Inc., and Lorn D. Frazier, Vice President of Farnsworth & Chambers Company, Inc., all hereinafter called defendants and all respectively in the year 1951 were employed by Farnsworth & Chambers Company, Inc., a corporation engaged in the general contracting business in the State of Texas by virtue of a permit issued by the State of Texas, did wilfully and knowingly attempt to evade and defeat a large part of the taxes due and owing by Farnsworth & Chambers Company, Inc. to the United States of America for the calendar year 1951, by falsifying and altering, and causing to be falsified and altered, invoices, books and records, memorandums, and other documents of Farnsworth & Chambers Company, Inc. at Houston, Texas, and approving and causing to be approved false invoices and documents at Houston, Texas, and concealing and causing to be concealed assets of Farnsworth & Chambers Company, Inc. at Houston, Texas, and diverting and causing to be diverted net income of Farnsworth & Cham- [fol. 468] bers Company, Inc. at Houston, Texas, and concealing and causing to be concealed income of Farnsworth & Chambers Company, Inc. at Houston, Texas, and preparing and causing to be prepared, and mailing and causing to be mailed at Houston, Texas, a false and fraudulent corporate income tax return on behalf of Farnsworth & Chambers Company, Inc. at Houston, Texas, for the calendar year of 1951, which was filed on or about April 16, 1952 with the Collector of Internal Revenue for the First Internal Revenue District at Austin, Texas, wherein it was stated that the net income of the said corporation for the said calendar year of 1951 was the sum of $399,135.98, and that the total amount of tax due thereon was the sum of $194,482.66, whereas, as they then and there well knew the net income of the corporation for the said calendar year of 1951 was the sum of $763,599.62 upon which said net income the corporation owed to the United States of America a total tax of $482,278.96, in violation of Section 145(b) of the Internal Revenue Code of 1939: 26 U.S.C. 145(b).

How do you plead to Count One, guilty or not guilty?

Defendant Lott: I plead nolo contendere.

Mr. Schwartz: Count Two: That in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, one Richard A. Farnsworth, Sr., Chairman of the Board of Directors of Farnsworth & Chambers Company, Inc., Lee Blocker, Treasurer of Farnsworth & Chambers Company, Inc., H. A. Lott, Vice President of Farnsworth & Chambers Company, Inc., Alan Farnsworth, [fol. 469] Purchasing Agent and Employee of Farnsworth & Chambers Company, Inc., all hereinafter called defendants and all respectively in the year 1952 were employed by Farnsworth & Chambers Company, Inc., a corporation engaged in the general contracting business in the State of Texas by virtue of a permit issued by the State of Texas, did wilfully and knowingly attempt to evade and defeat a large part of the taxes due and owing by Farnsworth & Chambers Company, Inc. to the United States of America for the calendar year 1952, by falsifying and altering, and causing to be falsified and altered, invoices, books and records, memorandums, and other documents of Farnsworth & Chambers Company, Inc. at Houston, Texas, and approving and causing to be approved false invoices and documents at Houston, Texas, and concealing and causing to be concealed assets of Farnsworth & Chambers Company, Inc. at Houston, Texas, and diverting and causing to be diverted net income of Farnsworth & Chambers Company, Inc. at Houston, Texas, and concealing and causing to be concealed income of Farnsworth & Chambers Company, Inc. at Houston, Texas, and preparing and causing to be prepared, and mailing and causing to be mailed at Houston, Texas, a false and fraudulent corporate income tax return on behalf of Farnsworth & Chambers Company, Inc. at Houston, Texas for the calendar year of 1952, which was filed on or about May 12, 1953 with the District Director of Internal Revenue for the Austin District of the Internal Revenue Service at Austin, Texas, wherein it was stated that the net income of the said corporation for the said calendar year of 1952 was the sum of $410,937.87, and that the total amount of tax due thereon was the sum of $207,135.40, whereas, as they then and there well knew the [fol. 470] net income of the corporation for the said calen-

dar year of 1952 was the sum of $495,528.77, upon which said net income the corporation owed to the United States of America a total tax of $251,122.66, in violation of Section 145(b) of the Internal Revenue Code of 1939: 26 U.S.C. 145(b).

How do you plead as to Count Two?

Defendant Lott: I plead nolo contendere.

Mr. Schwartz: Count Three: That in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, on Richard A. Farnsworth, Sr., Chairman of the Board of Directors of Farnsworth & Chambers Company, Inc., Lee Blocker, Treasurer of Farnsworth & Chambers Company, Inc., H. A. Lott, Vice President of Farnsworth & Chambers Company, Inc., Alan Farnsworth, Purchasing Agent and Employee of Farnsworth & Chambers Company, Inc., and Lorn D. Frazier, Vice President of Farnsworth & Chambers Company, Inc., all hereinafter called defendants and all respectively in the year 1953 were employed by Farnsworth & Chambers Company, Inc., a corporation engaged in the general cont acting business in the State of Texas by virtue of a permit issued by the State of Texas, did wilfully and knowingly attempt to evade and defeat a large part of the taxes due and owing by Farnsworth & Chambers Company, Inc. to the United States of America for the calendar year 1953, by falsifying and altering, and causing to be falsified and altered, invoices, books and records, memorandums, and other documents of Farnsworth & Chambers Company, Inc. at Hous-
[fol. 471] ton, Texas, and approving and causing to be approved false invoices and documents at Houston, Texas, and concealing and causing to be concealed assets of Farnsworth & Chambers Company, Inc. at Houston, Texas, and diverting and causing to be diverted net income of Farnsworth & Chambers Company, Inc. at Houston, Texas, and concealing and causing to be concealed income of Farnsworth & Chambers Company, Inc. at Houston, Texas, and preparing and causing to be prepared, and mailing and causing to be mailed at Houston, Texas, a false and fraudulent corporate income tax return on behalf of Farnsworth & Chambers Company, Inc. at Houston, Texas for the calendar year of 1953, which was filed on or about May 24, 1954

with the District Director of Internal Revenue for the Austin District of the Internal Revenue Service at Austin, Texas, wherein it was stated that the net income of the said corporation for the said calendar year of 1953 was the sum of $179,628.93, and that the total amount of tax due thereon was the sum of $87,907.04, whereas, as they then and there well knew the net income of the corporation for the said calendar year of 1953 was the sum of $362,929.90, upon which said net income the corporation owed to the United States of America a total tax of $183,223.55, in violation of Section 145(b) of the Internal Revenue Code of 1939: 26 U.S.C. 145(b).

How do you plead to Count Three of the indictment?

Defendant Lott: I plead nolo contendere.

[fol. 472] Mr. Schwartz: Count Four: That in the Houston Division of the Southern District of Texas and within the jurisdiction of this Court, one Richard A. Farnsworth, Sr., Chairman of the Board of Directors of Farnsworth & Chambers Company, Inc., Lee Blocker, Treasurer of Farnsworth & Chambers Company, Inc., H. A. Lott, Vice President of Farnsworth & Chambers Company, Inc., Alan Farnsworth, Purchasing Agent and Employee of Farnsworth & Chambers Company, Inc., and Lorn D. Frazier, Vice President of Farnsworth & Chambers Company, Inc., all hereinafter called defendants and all respectively in the year 1954 were employed by Farnsworth & Chambers Company, Inc., a corporation engaged in the general contracting business in the State of Texas by virtue of a permit issued by the State of Texas, did wilfully and knowingly attempt to evade and defeat a large part of the taxes due and owing by Farnsworth & Chambers Company, Inc. to the United States of America for the calendar year 1954, by falsifying and altering, and causing to be falsified and altered, invoices, books and records, memorandums, and other documents of Farnsworth & Chambers Company, Inc., at Houston, Texas, and approving and causing to be approved false invoices and documents at Houston, Texas, and concealing and causing to be concealed assets of Farnsworth & Chambers Company, Inc. at Houston, Texas, and diverting and causing to be diverted net income of Farnsworth & Chambers Company, Inc. at Houston, Texas, and concealing and

causing to be concealed income of Farnsworth & Chambers Company, Inc. at Houston, Texas, and preparing and causing to be prepared, and mailing and causing to be mailed at Houston, Texas, a false and fraudulent corporate income [fol. 473] tax return on behalf of Farnsworth & Chambers Company, Inc. at Houston, Texas for the calendar year of 1954, which was filed on or about March 14, 1955 with the District Director of Internal Revenue for the Austin District of the Internal Revenue Service at Austin, Texas, wherein it was stated that the net income of the said corporation for the said calendar year of 1954 was the sum of $282,441.03, and that the total amount of tax due thereon was the sum of $135,797.53, whereas, as they then and there well knew the net income of the corporation for the said calendar year of 1954 was the sum of $406,898.80, upon which said net income the corporation owed to the United States of America a total tax of $200,515.57, in violation of Section 7201, of the Internal Revenue Code of 1954: 26 U.S.C. 2017.

How do you plead as to Count Four of the indictment?

Defendant Lott: I plead nolo contendere.

Mr. Schwartz: Count Five: That on or about the 1st day of January of 1950, the exact date to the Grand Jurors unknown and continuously thereafter up unto and including the 14th day of March of 1955, in the Southern District of Texas, Houston Division and within the jurisdiction of this Court and other Judicial Districts of the United States of America, Richard A. Farnsworth, Sr., Lee Blocker, H. A. Lott, Lorn D. Frazier, and Alan Farnsworth, all of Houston, Texas all hereinafter called defendants did unlawfully, knowingly, wilfully and feloniously conspire, combine, confederate and agree together with each other and Dunbar [fol. 474] N. Chambers, deceased, not indicted herein, and divers other persons whose names are to the Grand Jurors unknown to violate Section 145(b) of the Internal Revenue Code of 1939, Section 145(b), Title 26, United States Code and Section 7201 of the Internal Revenue Code of 1954, Section 7201, Title 26, United States Code, to-wit: To wilfully attempt to evade and defeat a large part of the income taxes due and owing to the United States of America by Farnsworth & Chambers Company, Inc. for the calendar

years of 1951, 1952, 1953 and 1954 under circumstances and by the means and other manner following:

That at all times material herein:

1. Farnsworth & Chambers Company, Inc., a corporation engaged in the business of general contracting work in the State of Texas, as permitted by the State of Texas, with its principal office in Texas situated at Houston, Texas;

2. Richard A. Farnsworth, Sr. was Chairman of the Board of Directors of Farnsworth & Chambers Company, Inc.;

3. Lee Blocker was Treasurer of Farnsworth & Chambers Company, Inc.;

4. H. A. Lott was Vice President of Farnsworth & Chambers Company, Inc.;

5. Lorn D. Frazier was Vice President of Farnsworth & Chambers Company, Inc., and

6. Alan Farnsworth was Purchasing Agent and Employee of Farnsworth & Chambers Company, Inc.

[fol. 475] A. It was part of said conspiracy to falsify and alter books and records, memorandums, bills and receipts and documents of Farnsworth & Chambers Company, Inc.

B. It was further a part of the conspiracy to approve falsified invoices, bills, memorandums and documents for payment by Farnsworth & Chambers Company, Inc.

C. It was further a part of the conspiracy that defendants would conceal purchases of assets of Farnsworth & Chambers Company, Inc. by representing that payments for such assets were for rentals, repair expenses, parts expenses and materials used in construction work by Farnsworth & Chambers Company, Inc.

D. It was further a part of the conspiracy to alter and delete the true records of the corporation for the purpose of concealing the true net income of the corporation.

That the Grand Jurors further charge that at the times and at the places herein named, in furtherance of the object,

design and purpose of such conspiracy, the defendants hereinafter named did do and perform the following overt acts:

1. Each of the overt acts alleged in the preceding four counts of this indictment, in the respective dates and places alleged therein.

2. That on or about April 16, 1952, Richard A. Farnsworth, Sr., Lee Blocker, H. A. Lott, Alan Farnsworth, and [fol. 476] Lorn D. Frazier filed and caused to be filed a corporate income tax return on behalf of Farnsworth & Chambers Company, Inc., with the collector of Internal Revenue for the First Internal Revenue District at Austin, Texas.

3. That on or about May 12, 1953, Richard A. Farnsworth, Sr., Lee Blocker, H. A. Lott, Alan Farnsworth and Lorn D. Frazier filed and caused to be filed a corporate income tax return on behalf of Farnsworth & Chambers Company, Inc. with the District Director of Internal Revenue for the Austin District of the Internal Revenue Service at Austin, Texas.

4. That on or about May 24, 1954, Richard A. Farnsworth, Sr., Lee Blocker, H. A. Lott, Alan Farnsworth and Lorn D. Frazier filed and caused to be filed a corporate income tax return on behalf of Farnsworth & Chambers Company, Inc. with the District Director of Internal Revenue for the Austin District of the Internal Revenue Service at Austin, Texas.

5. That on or about March 14, 1955, Richard A. Farnsworth, Sr., Lee Blocker, H. A. Lott, Alan Farnsworth and Lorn D. Frazier filed and caused to be filed a corporate income tax return on behalf of Farnsworth & Chambers Company, Inc., with the District Director of Internal Revenue for the Austin District of the Internal Revenue Service at Austin, Texas.

6. On or about June 5, 1951, Richard A. Farnsworth, Sr. approved an invoice labeled "Requisition No. 12" showing Al Bubeck to be payee.

[fol. 477] 7. On or about December 31, 1951, Richard A. Farnsworth, Sr. at Houston, Texas, approved Voucher No. 47071 payable to Acme Airco No. 1 for one Amana freezer.

8. On or about January 24, 1953 in Houston, Texas, Richard A. Farnsworth, Sr. approved Voucher No. 70860 for work on a residence.

9. On or about May 4, 1954, Richard A. Farnsworth, Sr. at Houston, Texas, approved an invoice supporting Voucher No. 07490.

10. On or about April 28, 1952, Lorn D. Frazier approved an alleged invoice from Sim D. Brown.

11. On or about November 1, 1953, Lorn D. Frazier approved an alleged invoice from Herman Knox Furniture Company.

12. On or about November 25, 1952, Lorn D. Frazier approved an invoice from B. A. Hoffman.

13. On or about November 29, 1950, H. A. Lott approved Invoice No. 31701 from the National Sash & Door Company.

14. On or about May 15, 1951, H. A. Lott approved Invoice No. 10338 from the Coastal Equipment Company, Inc.

15. On or about February 25, 1952, H. A. Lott approved an alleged invoice from Sim D. Brown.

[fol. 478] 16. On or about September 26, 1953, H. A. Lott approved an invoice from G. V. Robles & Sons.

17. On or about March 31, 1954, H. A. Lott approved an alleged invoice from the Alamo Lumber Company.

18. On or about May 7, 1953, Lee Blocker at Houston, Texas, signed his name to the 1952 corporation income tax return as Treasurer of Farnsworth & Chambers Company, Inc.

19. On or about May 10, 1954, Lee Blocker at Houston, Texas, signed his name to the 1953 corporation income tax return as Treasurer of Farnsworth & Chambers Company, Inc.

20. On or about March 8, 1955, Lee Blocker at Houston, Texas, signed his name to the 1954 corporation income tax return as Treasurer of Farnsworth & Chambers Company, Inc.

21. On or about November 1, 1950, Lee Blocker approved Invoice No. 3664 alleged to be from the Coastal Equipment Company, Inc.

22. On or about December 31, 1951, Lee Blocker prepared Journal Voucher 654.

23. On or about June 2, 1951, Alan Farnsworth approved an invoice from the Hollywood Overhead Door Company.

[fol. 479] 24. On or about February 25, 1951, Alan Farnsworth approved a weekly field payroll charged to the Reagan School job.

25. On or about May 19, 1953, Alan Farnsworth approved an invoice from the Houston Iron & Steel Company.

26. On or about January 2, 1954, Alan Farnsworth approved an invoice from the Barber, Inc.

That the acts aforesaid were and are in violation of Section 371, Title 18, United States Code.

How do you plead as to Count Five of the indictment?

Defendant Lott: I plead nolo contendere.

The Court: Mr. Lott, you have heretofore been furnished a copy of the indictment in the case. You have gone over it, read it and discussed it with your privately employed attorneys, Mr. Moody and Mr. Bailey who are with you at this time?

Defendant Lott: Yes, sir.

The Court: You understand it is a serious case?

Defendant Lott: I do, sir.

[fol. 480] The Court: And that the possible penalty for the first four counts could be as much as five years imprisonment and $10,000 fine or both, or any part of either. There is no minimum. It could be that together with the cost of prosecution in the case.

Defendant Lott: I do, sir.

The Court: Although you have counsel and they are with you here in Court at this time, and in the final analysis it has to be your responsibility and no one else, and that is your decision?

Defendant Lott: Yes, sir.

The Court: And your responsibility?

Defendant Lott: Yes, sir.

The Court: And you enter this plea of nolo contendere voluntarily, that is willingly and freely and understanding the nature of the charge?

Defendant Lott: I do, sir.

[fol. 481] The Court: And you do so without any promise of leniency directly or indirectly, express or implied by the Government or anyone else, and no force or anything of that description has been used to you?

Defendant Lott: That is correct.

The Court: And you do so because you feel it should be made and for no other reason?

Defendant Lott: Yes, sir.

The Court: And the word "wilfull" appears in the indictment and I believe it is in each count. That means with bad purpose or without ground for believing that one's act is lawful or with careless disregard by the one that has the right to so act.

Do you understand that that is the definition?

Defendant Lott: I do, sir.

The Court: And lastly, have you ever been adjudged a person of unsound mind or have you ever received a severe head injury or have you ever been treated for a mental or nervous disease?

Defendant Lott: I have not, sir.

[fol. 482] The Court: On the first four counts, the substantive counts, I have told you the possible penalty on those counts. The fifth count is the same, it could be as much as five years or $10,000 or both. It doesn't have the provision of the possible cost of prosecution in it. Do you understand that?

Defendant Lott: Yes, sir, I do.

The Court: I will accept the plea of nolo contendere.

Have the probation office, Mr. Barry, make the investigation and after you have completed it put all copies of it,

seal it and keep it there until time for the sentence, whenever that will be. Bring it to me with the seal unbroken.

Continue the bond.

Mr. Schwartz: Yes, Your Honor.

Mr. Moody: The Court has heretofore entered an order that Mr. Lott could travel out of the district.

The Court: That continues, of course. There is no deviation from that at all.

I believe that is all at this time?

Mr. Butler: Nothing from the Government, Your Honor.

[fol. 483] The Court: Court will stand adjourned under the Rules.

IN UNITED STATES DISTRICT COURT

CLERK'S DOCKET ENTRY ON REARRAIGNMENT—Entered March 29, 1959

Rearraignment: Deft. H. A. Lott.

Plea of Nolo Contendere on all counts.

Presentence investigation ordered for sentence at conclusion of entire case.

Deft. allowed to leave Southern District of Texas while under bond. (ABH).

[fol. 487]

IN UNITED STATES DISTRICT COURT

Sentencing of Defendants Lee Blocker, H. A. Lott and Lorn D. Frazier

* * * * * * *

APPEARANCES:

Fred L. Hartman, Esq., Assistant United States Attorney, Post Office Building, Houston, Texas,

Newton B. Schwartz, Esq., Assistant United States Attorney, Post Office Building, Houston, Texas, For the Government.

John H. Crooker, Sr., Esq., Fulbright, Crooker, Freeman, Bates & Jaworski, Bank of the Southwest Building, Houston, Texas,

Joe S. Moss, Esq., Esperson Building, Houston, Texas.
For the Defendants Lee Blocker and Lorn D. Frazier.
[fol. 488] Denman Moody, Esq. and William V. Ballew, Jr., Esq., Baker, Botts, Andrews & Shepherd, Esperson Building, Houston, Texas, For Defendant H. A. Lott.

Proceedings

Morning Session—June 19, 1959

Colloquy Between Court and Counsel

The Court: On the criminal action docket for sentence, Cause No. 13,298, United States of America versus Lee Blocker, Lorn D. Frazier, and H. A. Lott.

If the letter that counsel for Lee Blocker and Lorn D. Frazier was intended as a motion, it is overruled. Let the record so disclose. I believe all of the defendants are present, will they come forward.

Does the Government have anything to say to the Court at this time before I call on the defendants to tell me whatever they want to say or their lawyers or friends want to tell me in their behalf?

Mr. Schwartz: Your Honor, I believe the Court has heard the facts tried following these gentlemen's pleas.

If it please the Court, at the conclusion of the defendant's statements if there are any matters which are called upon for an answer, we would respectfully request permission to answer them then, but we think there is no other statement called for in the case.

[fol. 489] The Court: I will not say that I will at this time.

I will call the first on the docket, Mr. Blocker first, and then Mr. Lott and Mr. Frazier.

Mr. Blocker, do you have a statement to make or do you have counsel or friends who would like to say anything on your behalf before I pass sentence upon you?

All three of you have entered a plea of nolo contendere, and that is equivalent to a plea of guilty.

Mr. Crooker: I would suggest that we would like to introduce some character witnesses, and I think I can speak for two of the defendants and Mr. Lott's counsel will speak for him, and I think there may be a brief statement by one or both of our clients.

I would like to introduce the character witnesses first, if I might, and I assume that Mr. Lott's counsel will do likewise.

The Court: Apparently there is a number of them, and I will let them take the stand and let them be sworn one by one.

The Clerk: What are your ages?

Defendant Blocker: Forty-one.

Defendant Frazier: Forty-six.

[fol. 490] Defendant Lott: Fifty.

Mr. Crooker: Do you have, Your Honor, in mind any particular sequence? I want to keep the character witnesses with respect to each of them together.

The Court: It doesn't matter. The way they fall on the indictment is the way we will take them up. I believe it is Mr. Blocker and then Mr. Frazier and then Mr. Lott.

(All witnesses for Defendant Blocker are sworn.)

* * * * * * *

[fol. 520] Mr. Crooker: That is all of the testimony that we are going to offer. At the conclusion or at any time that Your Honor may want it, I do not think Mr. Frazier—you may want to ask him, but I think he has indicated that he has nothing to say unless Your Honor might want to ask him something.

Mr. Blocker would like to make a very brief statement and can make it standing here and not in answer to questions. You may have him sworn if you want, but it will be a very brief statement.

The Court: Suppose we have it now.

Mr. Crooker: Mr. Blocker, will you step forward.

The Court: If he does not care to be sworn it is not necessary. You may make whatever statement you would like to make.

Mr. Crooker: You understand the reason you are here and the Judge's duty to perform and you can make your statement in your own way.

Mr. Blocker: Your Honor, I have had an opportunity to think about what I am going to say for a long time, and it is kind of hard to wrap it all up in a few words, but I am going to try and do that.

In considering my case, I hope that it will be borne in mind that at the time I went to work with the Farnsworth [fol. 521] Company I was about twenty-six years of age, and I had had very little actual practical experience in business affairs up to that time. I had been married a short while, and after I had been with the company about a year we had our first child.

Then, when I was thirty-one Mr. Chambers and Mr. Farnsworth organized the new company, Farnsworth & Chambers Company, and practically all of my real experience in business had been with them.

At the time the new company was organized, my real problem was financial, mainly, and at that time I put my entire life savings, about eleven and a half thousand dollars plus ten thousand dollars that I was able to borrow in a local bank, in the company. My age is no justification for any mistakes I made in the past, and I recognize that, but I do think it is good, I do want to point out that I didn't have a broad background of years of experience before going to work with the company.

I have made some mistakes in these matters, and as I say for some time now I have recognized that fully, and I want to make that very clear to Your Honor that I do recognize it. Looking back over what went on, I am sorry that when things were presented in an improper manner that I didn't just leave the services of the company and find employment elsewhere, but hindsight is—it is just a matter of hindsight, and it is hard to lean on that at this time.

I will say this, today, and as far as anything in the future is concerned, I would definitely leave the services of a company before I would ever do anything, if called upon, in an improper manner.

I am not attempting at this time in any way to whitewash what I have done in the past. For quite a long time now I have been tortured more, much more, than could possibly [fol. 522] be done by what would be done in a Court. I own up to any improprieties that may have been permitted to exist.

The Court: Is there any doubt in your mind about that, you used the word "might"?

Mr. Blocker: There is no doubt at all, Your Honor. I didn't intend to use that word.

There are improprieties that exist.

There is one other thing that occurs to me that you might wonder about, why if I had objection to accounting irregularities, as I pointed out, why would I have let some amount of work be done by the company out at my house in 1951, which I did at that time.

I considered that in the nature of a bonus. It was a time when I needed some help, and the company has always been very considerate of its key personnel in trying to help them when they needed a helping hand, and the company had done that for other employees. I certainly realize that, looking back on it, again hindsight would clearly show that it was improperly handled but at the time I considered it more in the nature of a bonus, and something that I believe, really, it was wrong more as a matter of form. Had it been handled as a bonus rather than as it was done, I believe it would be without criticism.

Throughout the period that the Internal Revenue Service has carried on their investigation, I have tried in every way to cooperate with them in what they have tried to accomplish in our organization, and it is in that same spirit that I [fol. 523] am making these few remarks here today.

As I say, I have thought a lot about what I wanted to say, and I believe I have covered the important points.

I would like to say though that I filed a plea of nolo contendere with the effect of throwing myself on the mercy of the Court, and what I have said here today is to reaffirm that, and I have not regretted what I have done.

The Court: You mean the irregularity part or the nolo plea?

Mr. Blocker: That I have not regretted filing the nolo plea, Your Honor.

Mr. Crooker: We have no further testimony, Your Honor, and nothing further to add with respect to these two defendants whom we represent.

The Court: Does Mr. Frazier care to say anything in his own behalf?

Mr. Moody: Your Honor, since Mr. Crooker has gone forward with his testimony into other matters, it would suit me just as well if it satisfies your procedure for him to complete his presentation and then we could take up Mr. Lott in his order.

[fol. 524] The Court; Mr. Crooker, or Mr. Moss if they cared to say a few words, and as many as they want, you may do so now.

Mr. Crooker: Thank you, Your Honor. I had not expected to be called upon.

The Court: You were not called upon.

Mr. Crooker: I wanted to say something, but I hadn't expected the occasion to arise so quickly. What I wanted to say, Your Honor, is two or three things about the matter.

I wanted to remark to Your Honor what you doubtless know without my suggesting it to you or reminding you of it, that any man who enters a plea of nolo contendere, there are wonderful advantages to it. If I were doing it today I would do just exactly that, I would advise these clients of ours to do precisely what they did, and knowing that I am going to say about it is intended to not take anything from exactly what they did here in open Court. They are standing by it and so am I.

I make that remark, although don't think it is necessary to do it, but when a trial goes on in the absence of any man, even though it was set up that way himself, and with his lawyer, too, but it goes on and we do not know what was brought out—

[fol. 525] The Court: Right on that point, counsel, didn't you have this young man present every day and every hour taking down notes?

Mr. Crooker: Yes, I have everything, a daily report and everything that I had. That is not what I was going to suggest. I know what exactly was testified, in substance. He is not a shorthand reporter. We didn't buy a copy of it. We did buy one witness, I think, but we have a daily report.

Here is what I am going to say, without the opportunity to cross examine witnesses or bring out this or the other thing, a man might get a slightly different opinion about the case, especially where two contending forces seem to me, seemed to me during the trial to have, I am not critical of them, God bless them, that was their business, they were representing their respective clients, but one seemed to me to be emphasizing a good deal about one of my clients, and that other—

The Court: That would be Mr. Blocker?

Mr. Crooker: Yes, it would. The others seemed to do likewise. I am not complaining about that, I am not critical about that.

Your Honor is kind enough, I think you would give us days if we asked for it and wanted it. All I am doing is contenting myself with the statement that it does leave and did leave with Your Honor as you went along impressions [fol. 526] that were almost inescapable. I should say all but inescapable.

What I am saying is, that factually, and I think the record shows this, certainly through the testimony of Government witnesses, Mr. Reeves and Mr. Adams, that in 1951 their testimony shows and I have the substance of it, Your Honor, as you pointed out, and everyone here knows it, but the company set up a separate cost department that was not under the jurisdiction of Lee Blocker.

Now, nobody testified as to why that was done. Dunbar Chambers was dead. Mr. Farnsworth certainly wasn't. Had I been representing him or Your Honor or any other lawyer representing him, he wouldn't have gone out of his way to say why they set that up.

Anyway, Lee Blocker had no control in 1951. Mr. Reeves and Mr. Adams did say it related essentially to keeping cost records of the various jobs, and from that time on there were not as many opportunities or occasions for Lee Blocker to know about everything. That is not excusing what he did know, but about everything, the nature and extent of all of the irregularities, that is what I am pointing out.

I think that is shown clearly by the testimony of Reeves and Adams, two witnesses for the Government, whom so far as I know were worthy of credence.

The Court: You do not think possibly they could have been accomplice testimony?

Mr. Crooker: I think they were telling the truth and were in a position to know it. That is one thing about the testi- [fol. 527] mony of an accomplice, there is no one that knows the facts any better. You can look upon it with suspicion, but if you find the physical facts support it, but it is the most accurate testimony you can get. In my experience and what Your Honor has observed and experienced throughout his career, I think you will agree.

I think they testified, yes, their testimony I think the testimony of those two witnesses was subject to the accomplice rules and to be corroborated, but there were men on that jury and a good many other people that I know figured that they were telling the truth.

I have no complaint. I am calling attention that it was exculpatory for Mr. Blocker, but its exculpatory character, the extent of the testimony would have shown even more clearly that the occasions for Mr. Blocker's knowledge about or participation in irregularities lessened.

I don't say they stopped. They didn't, but I do think under the Government's testimony that is true.

Now, another factual matter that I wanted to point out, I think the testimony shows it in substance, but I think it is certainly undisputed that of the top key men, the six men, I am talking about after Farnsworth and Chambers, something that might be called a chain of command of the next six men, of the key men in that organization, five of them have more base salary than did Mr. Blocker. I have in mind Earl Calkins, Frank Glass, who testified, I think. I don't know.

The Court: He did.

[fol. 528] Mr. Crooker: And Pat Chambers and Lorn Frazier and Mr. Lott.

Now, I am mentioning those two names. There is no indication, I hope Your Honor will understand, I am not saying that they made more money than Blocker did and therefore anything. I am not drawing any deductions from that and I am not hinting or suggesting that you draw any, but the facts are that those five men were paid more salary than was Lee Blocker. All I am doing is to say that that indicates, for whatever it is worth, and Your Honor is able to appraise it.

The only other thing I have to suggest to Your Honor is that Your Honor is confronted with the duty and obligation and you cannot pass it on to anybody. I do not presume to try to exercise it or to suggest it. That is your job, of course. I know you know it, but I want you to know that I recognize it and realize it. You don't have to be told, and the only reason I mention it is to give you perfect assurance that all I want to do is suggest that compassion and justice are two sides of the same coin.

I don't think there is any justice, stern justice, rigorous, right, justice [illegible]out compassion, and I am certainly sure there can be no proper compassion without justice.

Now, the two have something of an antithesis between them. Where you can exercise mercy and pity and compassion and where are you going to rigorously enforce justice, administer justice. All I am saying to you is that in my humble judgment that whatever I have learned in these three-quarters of a century that I have been here, I can't help it (sic) believe but that there is a justice that is demanded and required that comes from the mind of God. [fol. 529] I think it does. I am just as profoundly convinced, may it please the Court that from the heart of God there comes compassion without which there can be no justice.

Time and again throughout the Bible, time and again through the Bible, the idea of compassion was illustrated by the Master himself when he was on earth. The woman taken in adultery to whom the Lord said, "Go and sin no more"; whose body was cleansed and her spirit straightened out. She was guilty, rigorously under the law, and under the old dispensation an eye for an eye and a tooth for a tooth in the Old Testament, she would have been stoned to death.

The same thing happened with the penitent thief on the cross to whom the Saviour said, "This night shalt thou be with me in Paradise."

St. Peter promised more than he fulfilled, and Our Lord always dealt with him compassionately even in his appearance before the disciples after the resurrection and his ascension and in which you and I believe, Your Honor, and which Christian people believe.

I do not mean to press the point or over emphasize it, but I am suggesting for Your Honors consideration that there can be no real justice without a proper method of compassion, that does not lie on my lips, it is not in my province as to how it should be exercised, especially when I am as close to it as I am.

I have a way of becoming interested in a matter and feeling that I know it. This man Frazier is a clean family man, for whom I have a profound respect. Mr. Blocker I know

better, I have known him longer. I have been in his home and he has been in mine, and his wife is in the audience.

[fol. 530] Incidentally, I am not testifying as a witness, but it is indisputable that his home is a nice, old-style, two-story house. It is not air conditioned, but it has an atmosphere into which I am happy and proud to take my wife on social visits, and I am proud to have them in my home and their three lovely children.

I will leave the matter to Your Honor, and I hope Your Honor does not consider me presumptuous at all when I am suggesting to Your Honor that in the administration of justice there must be a measure of compassion. Just how much, how little, where the balance is, it is up to Your Honor and I trust you will exercise it, and I am sure you will exercise it in whatever manner you determine to be right and proper.

The Court: Mr. Moss?

Mr. Moss: Just one moment, Your Honor.

If Your Honor please, I could not tell the Court any more than what has been said. In my own particular case, I could say that I didn't know the gentlemen till a few months ago. My entry into the matter was due to the untimely death of the lead counsel.

After going into the case, this result today has come about. As a result of my employment and the attendant publicity on it, I can truthfully say as an officer of the Court I have never had a case over twenty-five years as an attorney at the bar that has given me as much concern as has this one. Not so much from the standpoint of legal implication, but the standpoint of appeal from all walks of life that have shown such a great interest in the welfare of these two men.

[fol. 531] I would like to give you one example which I will testify to under oath if the Court desires.

I pulled into a strange filling station in a little town of Montgomery, Texas, northwest of Conroe.

The Court: If Judge Davis were in the audience he would testify to that.

Mr. Moss: The only time I was in the town in my life.

I pulled in the filling station and there was a stranger just getting some service and a truck pulled in and the

truck driver picked up the Sunday newspaper and made the statement without any prompting, "I just can't believe that Mr. Frazier would steal anything."

Thank you, Your Honor.

The Court: We will take a short recess and then we will start on the next phase of the case.

(Recess taken.)

The Court: You may continue, gentlemen.

Mr. Moody: Your Honor, Mr. Lott would like to address the Court.

Mr. Lott: Judge, I realize that I have made a great mistake and that I should have had the courage to have gotten out in 1953 when some of the younger fellows did. [fol. 532] The Court: That could be the first statement of remorse or repentance that I have heard during these last eleven weeks. Maybe I did hear, but I don't remember.

Go ahead.

Mr. Lott: I had worked for Farnsworth & Chambers Company and Farnsworth originally all of my life, and frankly, I didn't know anything else.

I realize that I made a great mistake and I shall never recover from it, and I shall never make a mistake again.

The Court: Call your witnesses.

Mr. Moody: Mr. Ballew and I both represent Mr. Lott and each of us would like to make a statement to the Court.

Your Honor, Mr. Lott plead nolo contendere in this case, and it must be obvious, of course, to the Court that no evidence of any kind was presented in his behalf. In other words, we forewent the opportunity to bring out such things that might be favorable to him in mitigation only, that is what I address myself to.

We did not have that opportunity and we voluntarily abandoned it when we plead nolo.

What I say, Your Honor, will have nothing to do with the defense of Mr. Lott. The plea of nolo has foreclosed that, I understand. I would like to mention to the Court a few facts which I feel are mitigating circumstances, which I think this Court would wish to hear before reaching a [fol. 533] final decision with respect to Mr. Lott.

I will be brief as possible, and I will not go over a rehash of the evidence that the Court sat through for nine weeks and heard. Certainly our pleading nolo did not contribute to the length of the trial, and we had hoped this thing would be over sooner, but it was not.

Your Honor, I feel that in a criminal case the type of character of a defendant's intent is of the greatest importance. That is the intent, which is the criminal intent.

If we determine the setting in which a respective defendant moves, if we determine that defendant's relative importance in the event of things, and if we determine who thought up things that were done and who was merely a follow-up, I think that we begin to get into the real guts, so to speak, of liability and criminality.

Alvin Lott's father died when Alvin was eight years old. He was born in Louisiana and he finished high school and was without resources. He went to work, as young men do who are not able to continue in school. He worked from 1927 to 1949 for R. P. Farnsworth Company. As he said here a moment ago, he just didn't know anything else. That was his life's work before these people, Farnsworth & Chambers came about in 1949, in this new company which was formed, Farnsworth & Chambers, Inc. He was given an opportunity, I suppose, as a long-time employee, to obtain three per cent of the stock of the company. I believe it was about three per cent.

Now, he never did own more than about that much in the company. That was his interest in Farnsworth & Chambers. The difference now with the new company was that he was [fol. 534] in charge of eight or ten jobs all over the southern states of the United States. He had no acquaintance with the accounting. His education did not qualify him as an accountant. He had no training in the way of corporate management.

He didn't have those things, not having been to school. In charge of all these jobs, Your Honor, this man was out of the office about three fourths of his time traveling among these states, doing the construction work.

Now, he is an outside man. He was not an office man. These are things that I do not believe were emphasized at

the trial, because there was no reason to emphasize them, and he was not here having plead nolo.

Your Honor, this was a one-man corporation, the will and direction of one man, Mr. Dunbar Chambers, permeated completely every policy and every decision that this company came to. In fact, Your Honor, I think it was pretty well illustrated at the trial that no one in the company, no matter the title, was hardly even allowed to think for himself. The policy and directions came from above.

Yes, Your Honor, others had titles. Mr. Lott was a vice president, but these titles in this company, as I have seen it, did not carry with it the authority that you would think such titles would have. It is hard to believe that a one-man company was run that way, but it was, and I believe that if any point was established during the trial or during my talks with any of these witnesses, that is the thing.

Now, Your Honor, on August 8 of 1957 Mr. Lott voluntarily agreed to give Mr. Gromatzky a full and complete statement. It is rather interesting the way that came up. [fol. 535] Mr. Lott phoned Mr. Ballew one day and said Mr. Gromatzky wanted to see him and take some statements. Mr. Ballew asked what it was about.

Mr. Lott told him "It was about Farnsworth & Chambers."

"Well, what does he want to know?"

Mr. Lott said he didn't care what he wanted to know, he was willing to tell the Government whatever it wanted to know.

Mr. Ballew said, "Hadn't we better get some time, you may want to refresh your memory about this and that?" and disregarding Mr. Ballew's advice, Mr. Lott nevertheless went straight ahead and without consultation of any kind or refreshing his memory, he cooperated fully with Mr. Gromatzky, which I think was a very fine thing for him to do.

Now, Mr Gromatzky took a full statement from Mr. Lott and he was kind enough to furnish us with a copy of that statement. This statement was taken long before Mr. Lott was charged with anything. He was under no charge as far as I knew. I don't suppose he knew that he was under suspicion. I don't know that.

Now, are they in mitigation, these circumstances? I say they are, and that's all I have in mind.

In that statement, Mr. Gromatzky paid, I think, a nice compliment to Mr. Lott on page 14 where he states to Mr. Lott: "I might as well pass on a compliment I heard on you the other day, that someone told me you had done a real good job on setting up the Air Force, or I guess it is the Army Air Force Academy up in Colorado."

Your Honor, this man was in charge of some very responsible jobs, and apparently he did them well.

[fol. 536] To reveal Mr. Lott's relative position in the company, regardless of title, I think title in this company meant practically nothing, I think it was given as maybe sometimes someone might give a title instead of a raise to a person, but these people had titles spread around pretty well, but when it came to authority there wasn't much there.

On page 42 of Mr. Gromatzky's transcript is this statement and answer which I think is rather revealing. Mr. Gromatzky says, "Let me ask you some more questions. It has been reported to me that you and these other corporate executives were so concerned about the costs that were being charged into the corporation that should have been charged to Mr. Chambers on his residence that you as a group and in a body went to see Mr. Chambers on several occasions and asked him to discontinue this practice. Is that true or is it false?"

Mr. Lott says, "I don't recall such a meeting with him discussing in that particular way, I would say that I have had some discussions with Mr. Chambers in effect about some of the practices and policies of the company which I could not correct."

Those statements were made, Your Honor, back in the middle of '57 before Mr. Lott thought he was defending himself in any type of a charge or criminal action, and when he went voluntarily down there to give this, as he knew it, on page 46, Your Honor, and this is another statement:

Mr. Gromatzky was asking him about the corporation and its management, and Mr. Lott made this statement: "I think that you know, and that most of them know that was pretty well a one-man organization, even though we did have titles as maybe vice president and directors and so forth, that most of our work in connection with this [fol. 537] sort of thing was not of our own making."

That was before Mr. Lott knew that he was going to be faced with any type of a charge.

Hortense Dyer, Your Honor, was a witness at the trial. Of course, we did not cross-examine her, we did not bring out anything that might have been a mitigating factor in Mr. Lott's behalf. However, had she been asked, she would have testified, "That Mr. Lott was a sort of servant that Mr. Chambers kept for years, that Mr. Lott was not even consulted when anything was being planned." She would further have testified that Mr. Dunbar Chambers told her and she was the secretary of Mr. Dunbar Chambers, "Lott is just a little man who doesn't understand big business."

On another occasion, Mr. Dunbar Chambers told her Lott is a good contractor, but he doesn't understand business.

The Court: Isn't that same little man the head of his own engineering company now?

Mr. Moody: That's right. He has gone out and started his own company in 1957. That is the man.

I think that gives you an insight into the authority that Mr. Lott had, and his role in this train of events.

He did leave, Your Honor, and he formed his own company, and he has been attempting to get along in it and to manage it and he has run that company, Your Honor, as far as I can determine, honorably and well since the time that he began it.

[fol. 538] There is another matter that I wish to mention, and I think it is very worthy of note, and that is that Mr. Lott in his new company and since 1957 has performed at least a half dozen different jobs for the Atomic Energy Commission at Los Alamos, New Mexico. Now, these are restricted jobs, Your Honor, and while I am not too well acquainted with the type of investigation and the goings on that you have to go through to get a job of that type, I can pretty well imagine that the United States Government is not going to give a restricted job of that type to a man who has not been first thoroughly investigated and found to be completely trustworthy.

One more word, Your Honor, and I will be through. I have had a good deal to do with Mr. Lott during the last year or so, since this has come up. I like him. I think he is a trustworthy man. I would trust him all the way with

what I had. I think he is an honorable man. He is the kind of fellow that I like to know, and he is the kind of man that I hope I will keep as my friend in the future.

The Court: Mr. Ballew?

Mr. Ballew: Thank you, Your Honor.

I will make these remarks brief. They will be personal in a way, but they, too, are directed towards mitigating circumstances, and also it will be a request for leniency.

My contact with Farnsworth & Chambers, sir, goes back to early 1953 when my college friends, Frank Glass and Louis Spaw, resigned from Farnsworth & Chambers for reasons in part that you know about, and came down to [fol. 539] our office and asked us to help them to organize a new construction company in Houston and to help them negotiate the repurchase of their stock from Mr. Chambers. That was early in '53 that I first became acquainted with the company and the personnel.

I think that is largely why Mr. Lott came to our firm in April of 1957 when he was discharged from Farnsworth & Chambers. He came down because Louis Spaw and Frank Glass had been through that before, and they said to go down to our firm and they would help. He came down in April of 1957 and asked that we assist him start a new construction company called H. A. Lott, and he asked that we help him negotiate the resale of his stock to the company.

Under the stock repurchase agreement, at that time there wasn't the slightest hint that he was involved in this criminal lawsuit and no intimation of it at the time. I would say this, since we undertook that representation in April, what Mr. Moody has said in his closing remarks, we have found him a decent citizen and an honest upright kind of man. That has been true of his life as we have learned it prior to his association with Farnsworth & Chambers and since then.

This man has made some great mistakes while at the company. He has not tried to deny them. He feels that it has been a bitter shame on his family.

I have every confidence that this man has learned a rather bitter lesson.

Let me say by way of mitigation, when we got into this criminal aspect of his life, it was in August of 1957 and we did not see this dark cloud coming at any time until the day before. He insisted upon talking to Mr. Gromatzky. At that time I think I was the one lawyer in the firm most [fol. 540] closely associated with Mr. Lott, and it was I that went to Dallas to see the Internal Revenue Service on his behalf and later went to Washington, D. C.

By way of mitigation, Your Honor, I think it would be significant in order to place this man in the total picture to point out some of the things that were said during those experiences.

I think that I am not misquoting the special investigator who did such a thorough job of this company, that he could have recommended prosecution against scores of employees of this company, but he felt that he had to draw the line at the level of responsibility, and he felt that Mr. Lott should be included.

However, he went on to add that in his opinion Mr. Lott was next to last in responsibility.

When I got to Washington and talked to the Justice Department lawyer about this case—

The Court: You mean next to the last of the six that were indicted?

Mr. Ballew: Yes, sir.

When I got to Washington, the lawyer in the Justice Department admitted that Mr. Lott wasn't living out of that corporation, and then I think it is of some significance that during the protracted trial of this case and in the closing moments, Mr. Schwartz said roughly this: Ladies and Gentlemen of the Jury, this conspiracy alleged by the Government could not possibly have taken place without [fol. 541] active participation of all five of these defendants, and added with the possible exception of Mr. Frazier and Mr. Lott.

These are three circumstances which I think are mitigating circumstances.

The Court: Mr. Lott was the one in charge and okayed everything pertaining to the Greenwood Valley Ranch.

Mr. Ballew: There is no question about that.

The Court: He was not the agent in charge, but the engineer in charge.

Mr. Ballew: He was president of the company, sir, of the Greenwood Valley Ranch.

The Court: And that was his type of engineering project?

Mr. Ballew: Yes, sir, he was the one that built the buildings, and Mr. Frazier paved it.

None of these remarks are materially definitive. He does not duck the responsibility, but I think it is fair to show where he fits in the total picture.

I personally know that this man made a bad decision back in '52 and '53. He is ashamed of what he did then, and he is regretful that he didn't get out of the company like Frank Glass did and Louis Spaw. I don't suppose there is a great deal of difference in Glass' situation and Spaw's and Mr. Lott's, except that he is a much older man [fol. 542] who had a son in college and a daughter. His work was all tied up in these companies.

It would be a more wrenching experience for him to face up to it and quit. He did not quit, and he is sorry. He is here today and I have every confidence in this man.

I will not belabor the Court any further, but we certainly hope that the Court will be lenient in this regard.

The Court: What about your witnesses?

(Witnesses sworn.)

* * * * * * *

[fol. 549] Dr. E. H. Westmoreland, a witness called on behalf of Defendant Lott, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Moody:

Q. You are Dr. E. H. Westmoreland?
A. Yes, sir.
Q. What is your occupation, please?
A. I am pastor of the South Main Baptist Church.
Q. How long have you been there?
A. Twenty-one years.
Q. How long have you lived in Houston?
A. I have lived in Houston since 1938.

Q. Do you know Alvin Lott?

A. Yes, sir, I have known him since 1944.

Q. How did you come to know him?

A. He and his family united with our church. They transferred from a church in New Orleans and became [fol. 550] members of our church shortly after they moved to Houston.

Q. That was when they moved here in 1944?

A. Yes, sir.

Q. Have they continued as members of the church up to the present time?

A. Yes, sir.

Q. Have you had any personal experiences with him, that is, have you done anything outside of church work, have you gone anywhere with him?

A. Yes, sir. Mr. Lott is a very close personal friend. He is a deacon in our church and has been through the years, and I know all of my deacons well, but I know some of them better, because some of them are in the inner circle, like Peter, James and John of our Lord. He is in the inner circle.

Q. Will you tell Judge Hannay what your estimate of Mr. Lott is with respect to honesty, fairness and being a law-abiding citizen?

A. Your Honor, I consider him one of the finest men I have ever known.

Mr. Moody: I believe that is all.

The Witness: I would like to say that every member of our congregation would come here as a witness in his behalf, and they would say he is one of the cleanest Christian men we have ever known.

The Court: But none of them were present during the ten weeks of testimony, were they?

[fol. 551] The Witness: Not that I know of, sir.

(Witness excused.)

Mr. Moody: That is all, Your Honor.

The Court: Is that all, gentlemen?

Mr. Hartman: That is all for the Government, sir.

The Court: I will sentence them at two o'clock. Please be back at that time.

(Recess taken.)

SENTENCING

The Court: Will the defendants and their counsel please stand.

The sentence of the Court on the defendants is as follows: I have found each guilty of the felonies as contained in the Grand Jury indictment.

As to the Defendant Lee Blocker, on Count One $2500 fine to be paid and three years imprisonment to serve. On Count Two, $2500 fine and three years imprisonment to serve. On Count Three, $5000 fine to be paid and three years imprisonment to be served. On Count Number Four, $5000 fine to be paid and three years imprisonment to be served. On Count Number Five, $5000 fine to be paid and three years imprisonment to be served. The prison terms as to each of the five counts are to run concurrently, so [fol. 552] the sentence as far as the Defendant Lee Blocker is concerned, it amounts to $20,000 fine to be paid and three years imprisonment to be served. I will recommend Seagoville.

As to the Defendant H. A. Lott, on Count One, $2500 fine to be paid, two years imprisonment to be served. On Count Number Two, $2500 fine to be paid and two years imprisonment to be served. On Count Number Three, $5000 fine to be paid and two years imprisonment to be served. On Count Number Four, $5000 fine to be paid and two years imprisonment to be served. On Count Number Five, $5000 fine to be paid and two years imprisonment to be served. The prison term, the terms are to run concurrently so the sum total as far as the Defendant Lott is concerned is $20,000 fine to be paid and two years to serve. Each of the five two year terms are to run concurrently one with the other.

As to the Defendant Lorn Frazier, as to Count One, $2500 fine to be paid, two years imprisonment to be served. On Count Number Two, $2500 fine to be paid and two years imprisonment to be served. As to Count Number Three,

$5000 fine to be paid and two years imprisonment to be served. As to Count Number Four, $5000 fine to be paid and two years imprisonment to be served. As to Count Number Five, $5000 fine to be paid and two years imprisonment to serve. Likewise the five two year terms are to be served concurrently, making a sum total of two years and $20,000 fine. I will recommend, as I did in the first instance, Seagoville, Texas, as to be the place of incarceration.

I will likewise continue the bond of each of the defendants for approximately thirty days. Each of them to report to the United States Marshal here in Houston at not [fol. 553] later than ten a.m., on July 20, 1959, to begin service of their respective terms of imprisonment.

Any questions?

That is all, then, Court will stand adjourned under the rules.

IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA,

v.

LEE BLOCKER.

No. Cr. 13298.

On the 19th day of June, 1959 came the attorney for the government and the defendant appeared in person and1 with counsel.

JUDGMENT AND COMMITMENT—Filed June 22, 1959

It Is Adjudged that the defendant has been convicted upon his plea of2 of nolo contendere of the offense of filing false and fraudulent corporate income tax returns, in violation of Title 26, U. S. Code, Section 145(b), as charged in Counts 1, 2 and 3, and in violation of Title 26, U. S. Code, Section 7201, as charged in Count 4; and the offense of conspiring to file false and fraudulent corporate income tax

returns, in violation of Title 18, U. S. Code, Section 371, as charged in Count 5; and the Court having asked the defendant whether he has anything to say why judgment [fol. 554] should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of4 Three (3) Years on each of Counts 1, 2, 3, 4 and 5, to run concurrently, making a total of three years.

It Is Further Adjudged that the defendant is hereby fined the sums of Two Thousand Five Hundred ($2,500.00) Dollars on Count 1, Two Thousand Five Hundred ($2,500.00) Dollars on Count 2, Five Thousand ($5,000.00) Dollars on Count 3, Five Thousand ($5,000.00) Dollars on Count 4, and Five Thousand ($5,000.00) Dollars on Count 5, to run consecutively making a total of $20,000.00.

It Is Adjudged that the United States of America shall recover from the defendant the sum of $20,000.00, named above, for which execution may issue. In default of payment of said fine, the defendant is to be further committed until the fine is paid or until he shall be otherwise lawfully discharged.

It Is Ordered that the defendant is to report to the United States Marshal at 10:00 A.M., on July 20, 1959, to begin service of this sentence.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal [fol. 555] or other qualified officer and that the copy serve as the commitment of the defendant.

Done the 22nd day of June, 1959.

Allen B. Hannay, United States District Judge.

The Court recommends commitment to:6 Seagoville, Texas.

Approved: F.L.H.

IN UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,

v.

H. A. LOTT.

No. Cr. 13298.

On the 19th day of June, 1959 came the attorney for the government and the defendant appeared in person and1 with counsel.

JUDGMENT AND COMMITMENT—Filed June 22, 1959

It Is Adjudged that the defendant has been convicted upon his plea of2 nolo contendere of the offense of filing false and fraudulent corporate income tax returns, in violation of Title 26, U. S. Code, Section 145(b), as charged in Counts 1, 2, and 3, and in violation of Title 26 U. S. Code, Section 7201, as charged in Count 4; and the offense of [fol. 556] conspiring to file false and fraudulent corporate income tax returns, in violation of Title 18, U. S. Code, Section 371, as charged in Count 5; and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of4 Two (2) Years on each of Counts 1, 2, 3, 4 and 5, to run concurrently, making a total of two years.

It Is Further Adjudged that the defendant is hereby fined the sums of Two Thousand Five Hundred ($2,500.00) Dollars on Count 1, Two Thousand Five Hundred ($2,-

500.00) Dollars on Count 2, Five Thousand ($5,000.00) Dollars on Count 3, Five Thousand ($5,000.00) Dollars on Count 4, and Five Thousand ($5,000.00) Dollars on Count 5, to run consecutively making a total of $20,000.00.

It Is Adjudged that the United States of America shall recover from the defendant the sum of $20,000.00, named above, for which execution may issue. In default of payment of said fine, the defendant is to be further committed until the fine is paid or until he shall be otherwise lawfully discharged.

[fol. 557] It Is Ordered that the defendant is to report to the United States Marshal at 10:00 A. M., on July 20, 1959, to begin service of this sentence.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Done the 22nd day of June, 1959.

Allen B. Hannay, United States District Judge.

The Court recommends commitment to:6 Seagoville, Texas.

Approved: F.L.H.

In United States District Court
For the Southern District of Texas
Houston Division

United States of America,

v.

Lorn D. Frazier.

No. Cr. 13298.

On the 19th day of June, 1959 came the attorney for the government and the defendant appeared in person and1 with counsel.

JUDGMENT AND COMMITMENT—Filed June 22, 1959

[fol. 558] It Is Adjudged that the defendant has been convicted upon his plea of2 nolo contendere of the offense of filing false and fraudulent corporate income tax returns, in violation of Title 26, U. S. Code, Section 145(b), as charged in Counts 1, 2, and 3, and in violation of Title 26 U. S. Code, Section 7201, as charged in Count 4; and the offense of conspiring to file false and fraudulent corporate income tax returns, in violation of Title 18, U. S. Code, Section 371, as charged in Count 5; and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of4 Two (2) Years on each of Counts 1, 2, 3, 4 and 5, to run concurrently, making a total of two years.

It Is Further Adjudged that the defendant is hereby fined the sums of Two Thousand Five Hundred ($2,500.00) Dollars on Count 1, Two Thousand Five Hundred ($2,500.00) Dollars on Count 2, Five Thousand ($5,000.00) Dollars on Count 3, Five Thousand ($5,000.00) Dollars on Count 4, and Five Thousand ($5,000.00) Dollars on Count 5, to run consecutively, making a total of $20,000.00.

It Is Adjudged that the United States of America shall recover from the defendant the sum of $20,000.00, named [fol. 559] above, for which execution may issue. In default of payment of said fine, the defendant is to be further committed until the fine is paid or until he shall be otherwise lawfully discharged.

It Is Ordered that the defendant is to report to the United States Marshal at 10:00 A. M., on July 20, 1959, to begin service of this sentence.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Mar-

shal or other qualified officer and that the copy serve as the commitment of the defendant.

Done the 22nd day of June, 1959.

Allen B. Hannay, United States District Judge.

The Court recommends commitment to: 6 Seagoville, Texas.

Approved: F.L.H.

IN UNITED STATES DISTRICT COURT

MOTION OF H. A. LOTT IN ARREST OF JUDGMENT—
Filed June 23, 1959

To the Honorable Judge of said Court:

Comes Now H. A. Lott, one of the defendants in the above suit, and, pursuant to Rule 34 of the Federal Rules of Criminal Procedure, respectfully requests this Honorable [fol. 560] Court to arrest its judgment entered herein with respect to him for the following reasons:

I.

The indictment does not state facts sufficient to constitute an offense against the United States.

II.

Counts I through IV are each insufficient as a matter of law to charge an offense against the United States because these counts fail to form a basis for a plea of double jeopardy as to any one or all of them. Their allegations do not sufficiently apprise defendant of what he would have been required to meet at trial.

III.

The indictment fails to charge an offense against the United States with any degree of certainty. The indictment fails to inform defendant of the nature of the accusation in order that he could make his defense thereto.

IV.

The conspiracy count (Fifth Count) is insufficient as a matter of law because it does not expressly allege a conspiracy agreement, if any.

Wherefore, premises considered, defendant H. A. Lott prays that the judgment and sentence with respect to him be arrested and set aside, that the indictment against him [fol. 561] be dismissed, and that he be granted such other relief as justice may demand.

Respectfully submitted,

Denman Moody, W. V. Ballew, Jr., Attorneys for Defendant H. A. Lott, 1600 Esperson Building, Houston, Texas.

Of Counsel: Baker, Botts, Andrews & Shepherd, 1600 Esperson Building, Houston 2, Texas.

Certificate of Service (omitted in printing).

[fol. 562]

IN UNITED STATES DISTRICT COURT.

MOTION OF H. A. LOTT REQUESTING ORAL ARGUMENT—Filed June 23, 1959

To the Honorable Judge of said Court:

Comes Now, H. A. Lott, one of the defendants in the above styled case, and respectfully requests the Court to grant oral argument on his Motion In Arrest Of Judgment, and in connection therewith respectfully shows the Court the following:

I.

Chief counsel for defendant H. A. Lott is Denman Moody and he will be absent from Houston, Texas, from June 24 to July 4, 1959. Defendant H. A. Lott requests that his Motion In Arrest of Judgment not be submitted for this Honorable Court's determination until said counsel has returned to this city, at which time it is requested that oral

argument be granted in connection with his Motion In Arrest of Judgment.

Wherefore, H. A. Lott respectfully prays that the Court grant oral argument upon his Motion In Arrest Of Judgment and that the same be set for submission at any time after July 4, 1959.

Respectfully submitted,

Denman Moody, Attorney for Defendant H. A. Lott, 16th Floor Esperson Building, Houston, Texas.

[fol. 563] Of Counsel: Baker, Botts, Andrews & Shepherd, 16th Floor Esperson Building, Houston, Texas.

IN UNITED STATES DISTRICT COURT

MOTION OF LEE BLOCKER AND LORN D. FRAZIER TO ARREST JUDGMENT—Filed June 23, 1959

To the Honorable District Court:

Lee Blocker and Lorn D. Frazier, defendants, hereinafter referred to as "movants", move, pursuant to Rule 34 of the Federal Rules of Criminal Procedure, that the Court arrest its judgment as to movants, and set aside said judgment and hold it for naught and dismiss the indictment against them for the following reasons:

[fol. 564]

1.

The indictment as a whole and each count of the indictment, both jointly and severally, fail to charge an offense against The United States of America.

2.

The indictment fails to charge an offense with certainty. It merely relates alleged acts that may tend to show an alleged offense but does not actually charge any. It fails to inform movants of the nature and cause of the accusation, in that it is not sufficiently clear and complete to show

a violation of law and to enable movants to know the nature and cause of the charge, so that they would have been able to make their defenses thereto. It fails to apprise movants of what they are charged with, personally, so that they could have been tried only on the charges, if any, which were to be leveled against them, personally.

3.

On their face, Counts 1 through 4, and each of them, are insufficient as a matter of law to charge an offense because they fail to serve as a basis for a plea of double jeopardy as to any one or all of them. Their allegations do not sufficiently apprise movants of what they would have been required to meet at trial. Movants were entitled to this information and it could not be supplied by inference or implication, and it could not be aided by resort to the averments of overt acts contained in the Fifth Count.

[fol. 565]

4.

Substantive Counts 1 through 4, and each of them, are insufficient as a matter of law in that they are multifarious. Instead of attempting to charge a single offense they attempt to charge many offenses, which, if they charge offenses at all, which is not admitted but expressly denied, each of the alleged substantive matters, if any, should have been made the object of separate counts.

5.

The Fifth Count, which is supposed to be the conspiracy count, is insufficient as a matter of law in that it does not distinctly and directly allege the conspiracy agreement, if any. It cannot be aided by inference or implication. The Count goes on to allege that certain acts were done, ostensibly as evidentiary matters pointing to what was agreed to be done (if any agreement in fact existed, which is not admitted but is expressly denied), but to allege evidentiary matters is not an allowable substitute for a clear statement of the agreement which the Government proposed to attempt to prove.

6.

The conspiracy count is subject to at least two further objections: (1) Either the same crime is charged in the substantive counts as is attempted to be charged in the conspiracy count; or (2) this is a situation where the agreement of the defendants was necessary for the completion of the alleged substantive crime and no ingredient of conspiracy is present in the alleged completed crime. In either [fol. 566] instance, the conspiracy count is fatally defective.

7.

Heretofore, movants timely filed their motion to quash the indictment against them. Said motion heretofore overruled, is now re-offered in its entirety and is incorporated by reference herein and made a part of this motion for all purposes.

Wherefore, premises considered, movants pray that the judgment and sentences of movants be arrested and set aside and that the indictment against them be dismissed, and that movants be granted such other relief as may be required to serve the ends of justice.

Fulbright, Crooker, Freeman, Bates & Jaworski, By John H. Crooker, Attorneys for Lee Blocker and Lorn D. Frazier, Bank of the Southwest Building, Houston 2, Texas.

Certificate of Service (omitted in printing).

[fol. 567]

IN UNITED STATES DISTRICT COURT

MOTION OF LEE BLOCKER AND LORN D. FRAZIER REQUESTING ORAL ARGUMENT—Filed June 23, 1959

To the Honorable District Court:

Lee Blocker and Lorn D. Frazier, defendants, respectfully request the Court to grant oral argument upon their Motion To Arrest Judgment, and in connection therewith show:

1.

As heretofore made known to the Court by counsel for movants, counsel who has signed this motion as well as the Motion To Arrest Judgment, will be absent from the State commencing Wednesday, June 24th, for a period of about two weeks. Said counsel will be back in the city not later than the 10th of July.

2.

Therefore, it is respectfully requested that this motion not be submitted for the Court's consideration and determination until after said counsel returns to the city, at which time counsel desires to present oral argument on said motion.

Wherefore, it is respectfully prayed that the Court grant oral argument upon the motion of Lee Blocker and Lorn D. Frazier to arrest judgment and that the same be set for submission after counsel's return to this city—at any time after July 10, 1959, and that these defendants have such [fol. 568] other relief to which they may show themselves entitled.

Fulbright, Crooker, Freeman, Bates & Jaworski, By John H. Crooker, Counsel for Lee Blocker and Lorn D. Frazier, Bank of the Southwest Building, Houston 2, Texas.

Copies of the foregoing motion have been served upon all other defendants in this cause and upon the United States in each instance by mailing same to the offices of their respective counsel of record.

John H. Crooker

Government's Answer to Motion of H. A. Lott in Arrest of Judgment; Omitted from the printed record pursuant to the designations of counsel as to printing record heretofore copied at pages 1 & 7.

IN UNITED STATES DISTRICT COURT

ORDER DENYING MOTION TO ARREST JUDGMENT

"July 13, 1959: Defendants Lee Blocker and Lorn D. Frazier's Motion to Arrest Judgment is Overruled.

Clerk will notify counsel.

(S.) Allen B. Hannay, United States District Judge."

[fol. 569]

IN UNITED STATES DISTRICT COURT

ORDER DENYING MOTION TO ARREST JUDGMENT

"July 13, 1959: Defendant H. A. Lott's Motion in arrest of Judgment is Overruled. Clerk will notify counsel.

(S.) Allen B. Hannay, United States District Judge."

IN UNITED STATES DISTRICT COURT

MOTION OF H. A. LOTT FOR REDUCTION OF SENTENCE OR PROBATION—Filed July 15, 1959

To the Honorable Judge of said Court:

Comes Now H. A. Lott, one of the defendants in the above suit and, pursuant to Rules 35 and 32(e) of the Federal Rules of Criminal Procedure, respectfully requests the Court to suspend the penitentiary sentence imposed upon him on June 19, 1959, or, in the alternative, to suspend the penitentiary sentence and place defendant H. A. Lott on probation as provided by law in order that the ends of justice and the best interest of the public as well as this defendant may be served thereby, and in support thereof would show unto the Court the following:

I.

Defendant H. A. Lott has no previous criminal record. He is sober, conscientious and an industrious citizen who

[fol. 570] has wofked in this part of the country since graduation from high school. He is married and has two grown children. His standing in the community is good, this conviction constituting the only blot on his record of 51 years.

II.

The sentence of June 19, 1959 imposed a fine of $2500 for each of the five counts contained in the indictment (totaling $20,000). Defendant H. A. Lott is willing and hereby offers to pay the said fine promptly.

III.

Defendant H. A. Lott is willing and hereby offers to make whatever restitution is deemed proper by this Court to his former employer, Farnsworth & Chambers Co., Inc., arising out of any benefits this defendant may have received from said Company which resulted in said Company paying a lesser amount of Federal income taxes than would otherwise be the case.

Wherefore, defendant H. A. Lott respectfully requests the Court to exercise the discretion granted it by Rule 35 of the Federal Rules of Criminal Procedure and suspend the execution of the penitentiary sentence of 2 years, or, in the alternative, to suspend the execution of said penitentiary sentence and place the defendant H. A. Lott on probation for such period and upon such terms and conditions as the Court deems best. Defendant H. A. Lott also re- [fol. 571] quests that this motion be acted upon at the Court's earliest convenience.

Respectfully submitted,

Denman Moody, W. V. Ballew, Jr., Attorneys for Defendant H. A. Lott, 16th Floor, Esperson Building, Houston 2, Texas.

Of Counsel: Baker, Botts, Andrews & Shepherd, 16th Floor, Esperson Building, Houston 2, Texas.

Certificate of Service (omitted in printing).

[fol. 572]

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL OF H. A. LOTT—Filed July 15, 1959

Name and address of appellant:

H. A. Lott, 3502 Amherst, Houston, Texas.

Name and addresses of appellant's attorneys:

Denman Moody and W. V. Ballew, Jr., Baker, Botts, Andrew & Shepherd, 16th Floor, Esperson Building, Houston, Texas.

Offense:

Evasion of corporate taxes owed by Farnsworth & Chambers Company, Inc., to the United States of America, for the calendar years 1951, 1952, 1953 and 1954 in violation of Section 145(b) of the Internal Revenue Code of 1939 for the years 1951, 1952 and 1953 and in violation of Section 7201 of the Internal Revenue Code of 1954 for the year 1954 (first four counts); unlawfully conspiring to evade such taxes for said calendar years in violation of Section 371, Title 18, United States Code (fifth count), to which, with the consent of the Court appellant H. A. Lott plead nolo contendere to each of said five counts.

Concise statement of judgment or order, giving date and any sentence:

Guilty to all five counts made by the trial Court on June 19, 1959, and sentence was imposed on June 19, 1959, fining appellant $2,500 on each of the five counts (total $20,000) and sentencing appellant to the federal penitentiary for [fol. 573] two years on each of the five counts, such sentences to run concurrently.

Name of institution where now confined, if not on bail:

Appellant is out on bail.

H. A. Lott, the above named appellant, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the above stated judgment.

Dated: July 15th, 1959.

Denman Moody, W. V. Ballew, Jr., Attorneys for Defendant H. A. Lott.

Of Counsel: Baker, Botts, Andrews & Shepherd, 16th Floor Esperson Building, Houston 2, Texas.

[fol. 574] Certificate of Service (omitted in printing).

[fol. 575]

IN UNITED STATES DISTRICT COURT

EXCERPT OF CLERK'S DOCKET ENTRIES ON JULY 16 AND 17, 1959

7-16 Oral hearing on Deft. Lott's Motions for Bail, for Reduction of Sentence or Probation, and to Stay Sentence to Pay Fine Pending Appeal (ABH) Court's ruling: Motion to Stay Sentence to Pay Fine Pending Appeal—overruled.

Motion for Reduction of Sentence or Probation—if Court has jurisdiction at this time, motion overruled.

Motion for Bail—continued until July 17, 1959.

7-16 Motion for Rehearing of Motion to Arrest Judgment, filed (Blocker and Frazier)

7-16 Affidavit of Otis M. Brigman, filed (Exhibit in support of motion for rehearing of motion to arrest judgment—Blocker and Frazier)

7-17 Outline of Mr. Schwartz's Opening Statement to the Jury Made on April 7, 1959, filed (Exhibit in Support of motion for rehearing of motion to arrest judgment—Blocker and Frazier)

7-17 First Amended Motion for Bail, filed (Lott)

7-17 Joint Notice of Appeal, filed (Blocker and Frazier)

7-17 Joint Motion for Bail Pending Appeal, filed (Blocker and Frazier)

7-17 Joint Motion for Suspension of Sentence or Probation, filed (Blocker and Frazier)

7-17 Motion to Strike, filed (Govt. objecting to filing of affidavit of Otis H. Brigman on 7-16-59)

7-17 Oral order granting First Amended Motion for Bail, fixing bond at $5,000—new bond to be executed—entered (ABH) (Lott)

7-17 Appearance Bond of Defendant H. A. Lott, filed ($5,000—Travelers Indemnity Company, surety)

[fol. 576]

7-17 Oral hearing on following motions of Defts. Blocker and Frazier (ABH): Motion for Rehearing of Motion to Arrest Judgment—overruled. Joint Motion for Suspension of Sentence or Probation—overruled. Joint Motion for Bail Pending Appeal and oral motion for supersedeas—Motion for bail, granted; each deft's bond set at $5,000. Oral motion for supersedeas or stay pending appeal to pay fine, overruled.

[fol. 578]

IN UNITED STATES DISTRICT COURT

MOTION OF LEE BLOCKER AND LORN D. FRAZIER FOR REHEARING OF MOTION TO ARREST JUDGMENT—Filed 16 day of July, 1959

To the Honorable District Court:

Now Come defendants, Lee Blocker and Lorn D. Frazier, and move that this Honorable Court grant a rehearing and a re-submission on their motion to arrest judgment, and in support hereof, respectfully show:

1.

Heretofore, defendants filed their written motion requesting oral argument along with their motion to arrest judg-

ment. Defendants know that they are not entitled to oral argument as a matter of right, but they anticipated some ruling by the Court on their motion for oral argument prior to submission.

[fol. 579] 2.

While awaiting the Court's ruling on the motion for oral argument, defendants' counsel set about preparing a brief and affidavit in support of their motion to arrest judgment. Counsel have been working diligently since that time to put the brief and affidavit in final form, anticipating that they would be timely filed on receiving notice of a submission date from the Court.

3.

On July 14, 1959, counsel for defendants learned, for the first time, that their motion to arrest judgment had been denied. Counsel had no notice, prior to said time, of the Court's decision on defendants' motion for oral argument or the Court's desires regarding submission date.

4.

Upon learning of the Court's ruling, there were quickly placed in final form two affidavits in support of the motion to arrest judgment and there were assembled informal memoranda of authorities and the substance of supporting oral argument, which we believe would be helpful to the Court in its decision on the motion to arrest judgment. It is respectfully requested that the Court consider said affidavits and, in the light of them, reconsider its decision and resubmit defendants' motion in arrest of judgment—either with or without oral argument, as the Court may please.

[fol. 580] Wherefore, it is prayed that this Honorable Court grant defendants a rehearing on their motion to arrest judgment by resubmission on such date as meets with the Court's convenience; that we be granted an opportunity to argue orally with respect to same; and in the alternative, that the Court reconsider defendants' motion to arrest judgment along with said affidavits in support of it without

oral argument, and that defendants have such other relief to which they may be entitled.

Joe Moss, John H. Crooker, Attorneys for Lee Blocker and Lorn D. Frazier.

My name is John H. Crooker; I am counsel of record for Lee Blocker and Lorn D. Frazier, defendants in the above action. I have prepared the foregoing motion and it is true and correct.

John H. Crooker

Subscribed And Sworn To before me on July 14, 1959.

Elizabeth Moreau, Notary Public in and for Harris County, Texas.

(Seal)

Triplicate copy of the above motion has been served upon the United States Attorney, and extra copies have been served upon the attorneys of record for defendants, Mr. [fol. 581] H. A. Lott and Richard A. Farnsworth, Sr., in accordance with law.

John H. Crooker

[fol. 610]

IN UNITED STATES DISTRICT COURT

OUTLINE OF MR. SCHWARTZ'S OPENING STATEMENT TO THE JURY MADE ON APRIL 7, 1959—Filed 17 day of July, 1959

Exhibit In Support of Motion for Rehearing of Motion to Arrest Judgment

(As reported by Charles W. Hall, attorney with Fulbright, Crooker, Freeman, Bates & Jaworski.)

Mr. Schwartz stated that the Government's evidence would show five general areas of attempted tax evasion:

1. Unreported income: About $70,000 received by Farnsworth & Chambers Co., Inc., was not reported as income. This included income from bulldozing work, dirt work, cleaning ditches, constructing roads, and sales of timber.

2. Residences: Expenditures on the residences of Mr. Chambers and Mr. Farnsworth were charged to other jobs and taken as corporate deductions. About $230,000 on Mr. Chambers' 3990 Inverness residence, about $35,000 on Mr. Farnsworth's 1407 Kirby Drive residence, and about $4,000 on Mr. Farnsworth's 3126 Newcastle residence were incorrectly charged.

3. Executives' personal expenses: About $68,000 of personal expenditures were charged to jobs and taken as corporate deductions. The vast bulk of these expenditures were for Mr. Chambers and Mr. Farnsworth, but Messrs. Blocker, Frazier, and Lott had personal expenditures charged to jobs. For examples, Mr. Frazier obtained a set [fol. 611] of golf clubs and Mr. Blocker obtained a water system on some land of his.

4. Greenwood Valley Ranch: About $250,000 was expended improving the ranch, and $20,000 a year was paid as rent for using the ranch. All but about $18,000 of the improvements were charged to other jobs. About $125,000 of the $250,000 total was expended on the ranch, exclusive of the lodge, and about $103,000 thereof was expended on the lodge.

5. Expensing instead of capitalizing heavy equipment and other assets of Farnsworth & Chambers Co., Inc.:

Mr. Schwartz spent almost an hour discussing these five general areas. He gave in detail the amounts and the names of the payees of the amounts which made up the totals shown. For example, with respect to Mr. Chambers' residence he outlined over 25 items which made up the $230,000 total.

The end result of this was stated to be that corporate income was reduced by about $750,000 to $1,000,000 and taxes thereon were reduced by over $500,000.

This reduction in taxes was accomplished through irregular accounting practices, including the handling of invoices for merchandise and services, submitted for payment by the corporation, in such a way as incorrectly to charge the payments to the cost of unrelated construction jobs. Sometimes the invoices were simply charged incor-

rectly to unrelated construction jobs. Other times the invoices were sent back to the vendors for resubmission in [fol. 612] changed form or were retyped in the Farnsworth & Chambers Co., Inc., office.

* * * * * * *

I, Charles W. Hall, hereby certify that I was personally present in Court on April 7, 1959, when Mr. Newton Schwartz, Assistant United States Attorney, made his opening statement to the jury in the trial of United States vs. Richard A. Farnsworth, Sr., et al.. I made copious notes of his opening statement, and the above and foregoing is a true and correct outline of it.

CHARLES W. HALL,
(Charles W. Hall).

Subscribed and sworn to before me on July 14, 1959.

ELIZABETH MOREAU,
(Elizabeth Moreau),
Notary Public in and for
Harris County, Texas.

[fol. 613]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

THE UNITED STATES OF AMERICA,

v.

LEE BLOCKER and LORN D. FRAZIER.

Cr. No. 13,298.

JOINT NOTICE OF APPEAL OF LEE BLOCKER AND LORN D. FRAZIER—Filed 17 day of July, 1959

To the Honorable District Court:

Now come Lee Blocker and Lorn D. Frazier, defendants herein, and file this, their notice of appeal to the United

States Court of Appeals for the Fifth Circuit for each of them, and in connection therewith respectfully show:

1.

Appellant Lee Blocker is a resident citizen of the City of Hedwig Village, Harris County, Texas, and his address is 9 Hedwig Circle. The appellant Lorn D. Frazier is a resident citizen of Houston, Harris County, Texas, and his address is 3302 Lawrence Street.

2.

Appellants, and each of them, were convicted and sentenced, upon the first four counts of the indictment, for attempted evasion of corporate taxes owed by Farnsworth & Chambers Co., Inc., to the United States of America for the calendar years 1951 through 1953 in violation of Section 145(b) of the Internal Revenue Code of 1939, 26 U.S.C. [fol. 614] 145(b), and attempted evasion of said taxes for the calendar year 1954 in violation of Section 7201 of the Internal Revenue Code of 1954. They were also convicted and sentenced under the fifth count for conspiring to attempt to evade such taxes for said calendar years in violation of Section 371, Title 18, United States Code. To all these offenses, upon proper application and with the consent of the Court, these appellants, Lee Blocker and Lorn D. Frazier, and each of them, pleaded nolo contendere.

3.

The Court found appellants guilty and sentenced each of them under all five counts, on June 19, 1959. Each was fined $2500 on each of the first two counts along with $5000 on each of the last three counts, for total separate fines of $20,000. Appellant Lee Blocker was sentenced to the Federal penitentiary for terms of three years on each of the five counts, such sentences to run concurrently. Appellant Lorn D. Frazier was sentenced to the Federal penitentiary for terms of two years on each of the five counts, such sentences to run concurrently.

4.

Appellants, and each of them, are represented herein by Mr. Joe Moss, Niels Esperson Building, Houston, Texas, and Mr. John H. Crooker, of the firm of Fulbright, Crooker, Freeman, Bates & Jaworski, Bank of the Southwest Building, Houston, Texas.

[fol. 615]

5.

Appellants Lee Blocker and Lorn D. Frazier, and each of them, are presently at liberty pursuant to bail bonds granted by this Honorable Court.

6.

Appellants Lee Blocker and Lorn D. Frazier, and each of them, hereby appeal from the above stated convictions, sentencings, and judgments, to the United States Court of Appeals for the Fifth Circuit on July 17, 1959.

Joe Moss, John H. Crooker, Attorneys for Defendants Lee Blocker and Lorn D. Frazier, Bank of the Southwest Building, Houston 2, Texas.

Triplicate copy of the foregoing has been served upon the United States Attorney and counsel of record for Mr. H. A. Lott in accordance with law.

John H. Crooker

Joint Motion for Bail Pending Appeal for Lee Blocker and Lorn D. Frazier; Omitted from the printed record pursuant to the designations of counsel as to printing record heretofore copied at pages 1 & 7.

* * * * * * *

[fol. 616]

IN UNITED STATES DISTRICT COURT

JOINT MOTION OF LEE BLOCKER AND LORN D. FRAZIER FOR SUSPENSION OF SENTENCE OR PROBATION—Filed 17 day of July, 1959

To the Honorable District Court:

Now come Lee Blocker and Lorn D. Frazier, and each of them, defendants in the above suit, and pursuant to the provisions of Section 3651, Title 18, United States Code, and Rule 32(c) of the Federal Rules of Criminal Procedure, respectfully request this Honorable Court to suspend the penitentiary sentences imposed upon them, and each of them, on June 19, 1959. In the alternative, it is respectfuliy requested that this Honorable Court suspend these penitentiary sentences and place defendants, Lee Blocker and Lorn D. Frazier, and each of them, on probation under such conditions as the Court deems proper. In support, defendants respectfully show:

1.

The sentences of June 19, 1959, imposed a fine on each of the defendants of $2500 for each of the first two counts of the indictment, along with a fine of $5000 for each of the last three counts of the indictment. This amounts to a $20,000 fine for each defendant. Defendants, and each of them, respectfully hereby assure this Honorable Court that they, and each of them, have made arrangements to raise enough money to pay their respective fines in full, and such fines will be paid by the end of this day, July 17, 1959, to the United States of America.

[fol. 617]

2.

Defendants, and each of them, have offered, and hereby do offer as a matter of public record, to make full restitution to their employer, Farnsworth & Chambers Co., Inc., all money, benefits and any other things of value which these defendants, and each of them, received from said

Company, which resulted in said Company paying less Federal income taxes than it would have paid otherwise. This monetary figure is currently in the process of being determined by Farnsworth & Chambers Co., Inc., so that such restitution shall be made.

3.

Defendant, Lee Blocker, is a native citizen of Houston, Harris County, Texas, and has resided here all his life. He lives at 9 Hedwig Circle with his devoted wife and three little daughters, whose ages are fourteen, eleven and one-half and five years. He is an active member of the Fourth Church of Christ, Scientist. He is, and has been for many years, engaged in a useful occupation in the construction business in Houston, Harris County, Texas, with his present employer, Farnsworth & Chambers Co., Inc. He has no previous criminal record and up until the time of this conviction has enjoyed the reputation of being a peaceful, law abiding, and respected citizen, leading a useful life and engaging actively in civic work.

4.

Defendant Lorn D. Frazier was born in the State of Louisiana. He has lived in Houston, Harris County, Texas, [fol. 618] for the past fourteen years. He resides at 3302 Lawrence Street with his devoted wife and two children, a boy, age ten, and a girl, age fourteen years. He is an active member of the Catholic Church of St. Rose of Lima. He is, and has been for many years, engaged in a useful occupation in the construction business in Houston, Harris County, Texas, with his present employer, Farnsworth & Chambers Co., Inc. He has no previous criminal record and up until the time of this conviction has enjoyed the reputation of being a peaceful, law abiding, and respected citizen, leading a useful life and engaging actively in civic work.

5.

From the inception of this prosecution, over a year ago, these defendants, and each of them, have suffered greatly

from the humiliation caused by the public charges against them and from the resulting loss of prestige and stature in the business world and community in which they live. The strain and tension throughout this long period of time, in connection with this prosecution, have been enhanced by the resulting distress rendered more severe by the financial strain of the imposition of fines and the necessity of making restitution to their employer, Farnsworth & Chambers Co., Inc.

Because of the close ties existing between each defendant and the members of their respective families, their punishment has not alone been their own punishment, but punishment shared by their respective wives and children. The tensions and uncertainties stemming from this prosecution [fol. 619] have punished severely both defendants and their respective loved ones, whose well being are inseparable from their own.

6.

It is respectfully suggested that justice will not be sacrificed or frustrated if the execution of the respective sentences of imprisonment is now suspended. This is so because of the great suffering heretofore and currently being experienced by each defendant and their respective families. Further, these defendants, and each of them, can and will contribute richly as law abiding, devout, sober and industrious citizens to the society and community in which they live if they may remain at large under suspended sentences. Defendants' respective families desperately need their financial support, comfort and guidance. Because each of defendants has sincerely determined never to violate the law of the land, society about them will benefit from their contribution at useful endeavors if they be relieved of the necessity of languishing in prison.

Wherefore, defendants, Lee Blocker and Lorn D. Frazier, and each of them, respectfully request this Honorable Court to suspend the execution of the penitentiary sentences of two years in the case of Lorn D. Frazier and three years in the case of Lee Blocker, or in the alternative, to suspend the execution of said penitentiary sentences and each of

them, and place these defendants, and each of them, on probation for such period and under such conditions and terms as this Honorable Court deems best in the premises.

Respectfully submitted,

[fol. 620] Joe Moss, John H. Crooker, Attorneys for Defendants, Lee Blocker and Lorn D. Frazier, Bank of the Southwest Building, Houston 2, Texas.

[fol. 622]

IN UNITED STATES DISTRICT COURT

Reporter's Transcript of Proceedings

APPEARANCES:

Fred L. Hartman, Esq., Assistant United States Attorney, Post Office Building, Houston, Texas.

Newton B. Schwartz, Esq., Assistant United States Attorney, Post Office Building, Houston, Texas, For the Government.

John H. Crooker, Sr., Esq., Fulbright, Crooker, Freeman, Bates & Jaworski, Bank of the Southwest Building, Houston, Texas.

Joe S. Moss, Esq., Esperson Building, Houston, Texas, For the Defendants Lee Blocker and Lorn D. Frazier.

Proceedings

COLLOQUY BETWEEN COURT AND COUNSEL—July 17, 1959

The Court: Yes, gentlemen?

Mr. Crooker: Judge, I am sorry I got here about a minute after you went out that door, but I did the best I could. I assume that Your Honor read the two affidavits which we left yesterday with the motion?

The Court: Mr. Brigman's?

Mr. Crooker: Yes.

The Court. The one of Mr. Timmons?

[fol. 623] Mr. Crooker: Somehow I think it was. Of course, I wouldn't have known even if they were.

The Court: Let's see, there is one of Mr.—

Mr. Crooker: Mr. Brigman is the one who attended those conferences. Malcolm McCorquodale attended all of them, but he is dead. I got in on one of them.

The Court: There is one affidavit here. You said two affidavits?

Mr. Crooker: One attached to the motion, Judge, that is referred to in it. The Austin conference about which Mr. Brigman testifies was taken down in shorthand and transcribed and is attached to it.

The Court: This is the whole thing?

Mr. Crooker: And then there is a second one, the outline of Mr. Schwartz's opening statement.

The Court: Where is that?

Mr. Crooker: I filed it yesterday.

I certainly gave counsel for the Government an extra copy and I thought I was—

[fol. 624] The Clerk: Is this it?

Mr. Crooker: Yes, I gave one back and you ought to look at the Court's copy.

The Court: All right.

Mr. Crooker: I gave counsel for the Government one yesterday and gave the Baker, Botts folks a copy of it and I thought that I had filed one. Obviously I didn't. I was mistaken about it. It is simply a brief outline as taken down by Mr. Charlie Hall in our office in what Mr. Schwartz said in the opening statement to the jury. I am offering it in connection with the insufficiency of the indictment. While that is being filed, Your Honor, I am not going to argue this motion extensively. I stated I wasn't, as a matter of right, entitled to it. I will state that one purpose that I had in filing these additional exhibits was to indicate the view from which we think the sufficiency of the indictment ought to be considered.

Now, all of the matters, the opening statement for example, we simply want to show there the Government may know, I mean the elements of the offense, that is a legal matter that is under all along, and I think you passed on it.

The Court: This came about after the extensive argument on motion to dismiss.

[fol. 625] Mr. Crooker: Yes, it did.

The Court: And after the Court had permitted the plea of nolo contendere on behalf of the three defendants, and only the Two Farnsworths were on trial at that time.

Mr. Crooker: That is correct.

Now, for whatever it is worth I simply want to get it in the record, Your Honor, and certainly I did want to stress the one purpose, not the sole purpose, but one purpose in filing that was to make the affidavit of record rather than have our statement that it wasn't in the appeal if we come to filing one, or to say that we were asking for mere time and so forth.

Your Honor has passed on a similar matter here just now and therefore I have no purpose in prolonging it. I will say I had prepared what I think was a very, to me, maybe because I prepared it, a very persuasive brief.

The Court: This isn't one of your more modest days?

Mr. Crooker: One of those days that comes every decade or such thing.

If Your Honor will pass on that motion and have the judgment and resubmit it and in the light of these two exhibits I assume you are ready to pass on it?

[fol. 626] The Court: That's right. Overruled.

Mr. Crooker: Then we want to file something else. I would like that order to show that the filing of the two exhibits was allowed and considered and so forth.

The Court: It will be considered. Let the record show that it was filed.

Mr. Hartman: Your Honor, before any papers are filed, I would like the record to show we object to the filing of those affidavits and those statements. A motion has been prepared to strike them from the record that they are introduced too late. They are not part of this record. That motion in arrest of judgment is determined from the indictment, the plea, and the sentence and nothing else. The Court hearing this case will recall he very tediously explained the rights to these defendants. The offense and the charge to determine whether or not it was voluntary. They have admitted all of the facts in this indictment.

These are coming too late. They serve no purpose except to rehash the facts.

The Court: I would be glad to see whatever you have to file before I make the final decision. I will hear any objections to your objection from Mr. Crooker or Mr. Moss.

[fol. 627] Mr. Crooker: I do not object to his objections. I object to any merit in them.

The Court: I wonder, I do not want to take it out of context, but whatever you have to file, if you will give them to me at one time, then I will know whether he was going to answer something in writing and have it all before me rather than piecemeal.

Mr. Crooker: I simply got from him what I gave him yesterday and I gave him another copy this morning. Now, I want to file the three copies signed, two to go to you and the Clerk, and one goes to them, but I am tendering three copies of a motion for suspension of sentence or probation on behalf of both Mr. Blocker and Mr. Frazier.

I would like, Your Honor, if you do not mind to glance over that motion, beginning at paragraph 1—

The Court: I will do better than that. I will read it carefully.

Mr. Crooker: Thank you.

Judge, the only supplement I want to make at all to that, I think the matter is fairly well presented to you. The whole matter came pretty well in front of you in the trial of the defendants you had on trial.

The Court: And on the day of sentence.

[fol. 628] Mr. Crooker: Now, on that date Mr. Blocker himself made a personal statement to Your Honor and I am quite sure you heard it. I have no doubt of that, and I don't want to worry you with it or press it unduly. I don't know just what reaction you had to it, and I am not asking, but I am saying that I had the stenographer—I was a little worried about it, and I had the stenographer make the transcript and I have it here. Blocker made some brief references to his age and the fact when the company was organized, even then he had been with them four or five years.

The Court: If you have the transcript, I will be glad to read it.

Mr. Crooker: I did some underscoring for my purposes.

The Court: I have read it.

Mr. Crooker: May I suggest just one other brief matter. With respect to Mr. Frazier, the other defendant whom we represent, he did not make any statement upon sentence personally. I may say to you that we lawyers are responsible for that. It was our judgment then and still is that as a poor speaker under stress, Mr. Frazier is a very splendid construction superintendent, but nevertheless he did feel as contrite and was as ready to admit his misdoings, misdeeds. It was the same as the other defendants in my judgment. [fol. 629] The Court: I know he says he made mistakes and so forth. If you analyze that statement, all Mr. Blocker admits is accounting irregularities. You and I would probably call it by a harsher word.

Mr. Crooker: Something ought to be left to the imagination of a man as smart as you are. For example, everybody rationalizes what he does. One says this is a slick business deal and the other says he crooked me. I get your viewpoint, and I hope you get mine.

I did want to mention that about Frazier, though, the fact he made no public statement but he does in this motion and swears to it.

The Court: He is before the Court as well as Mr. Blocker. Mr. Blocker, I am sure, instigated it, but I don't believe there is a day I have not received letters to this same effect, to the effect that the man is civic minded and a good churchman.

Mr. Crooker: I know that he has not.

The Court: I have gotten at least six or eight, I think, including the last mail.

Mr. Crooker: If he and I had not—

[fol. 630] The Court: Then, on last Friday, a week from this Friday and you were not here, Mr. Blocker came over and wanted to talk to me privately, so Mr. Costa told me. I didn't see him. It was three-thirty in the afternoon. I told him I would be glad to hear him in open Court, in the presence of his lawyers and in the presence of the Government lawyers, and that still stands.

Mr. Crooker: I was not in town when that occurred. It was the week before I got back.

The Court: It was two weeks from today, if I recall correctly.

Mr. Crooker: I wasn't in town and had no idea about it and had no connection with it.

The Clerk: He stated that, Mr. Crooker.

The Court: The only reason I mentioned it was if he wanted to talk, I would be glad to hear him now.

Mr. Crooker: Let me say I think this is all I will say here, and I hope you understand it. It is accurate. You understand the circumstances that prompted him to do it, I think you would understand he wasn't trying to transgress upon the privacy of your office.

[fol. 631] The Court: That is all right, but since he had made the attempt, I felt it only fair to tell you and to offer him the opportunity now.

Mr. Crooker: There was some matters about the possible sale of his home, he wanted to find out about it. I don't know. My judgment is—I know what it is.

The Court: The only thing I wanted to do was offer him the opportunity now if he would like.

Mr. Crooker: He got a copy of this motion for suspended sentence and probation in the alternative.

Now, Your Honor, as I understand, did you act on that? I do not believe you did. I do not think we have anything further to offer in connection with it. We would be glad to address ourselves to any phase of it. I am not expecting Your Honor to run our end of this matter. You have got quite a lot to do.

The Court: The only thing I suggested, either the two defendants represented by you or one of them might want to make a statement or add something. Then I would afford them the opportunity.

Mr. Crooker: I have stated the substance of what he would have said. My judgment about it is it is a matter that you wouldn't have to draw on your imagination to know [fol. 632] about the facts anyway, very much, and I think we won't offer anything further.

Mr. Hartman: Your Honor, the Government would object to the motion of the defendant to reduce sentence on behalf of Frazier. We submit the facts justify the sentence imposed on these two defendants. We only have the benefit of

the facts adduced here. We do not have the benefit of the probation examiner's report. We think the facts would justify an even greater sentence and we object to it.

The Court: The motion for suspension of sentence or probation of the Defendant denied and overruled.

Mr. Crooker: I am getting at two more matters here. Your Honor, I have in my hands motions, a joint motion in behalf of each and both of the Defendants Blocker and Frazier, joint notice of appeal and the joint motion for bail pending appeal. These were prepared yesterday and there is one phase of it I want to call to your attention.

First, I don't want to file that notice of appeal unless and until I file with it the motion for bail. I don't want any questions on earth about your jurisdiction. My mind is clear on it. You went into that question very well this morning.

The Court: Thank you.

[fol. 633] Mr. Crooker: There is one phase of it to which I want to call your attention which I discovered only this morning. This motion for bail—no, the motion for suspension of sentence or probation states in it that defendants have arranged for the raising of the money necessary to pay their fines and will pay them during the day.

The Court: You were a little less crude than Mr. Moody. He propositioned me. He said if you will do this we will do that.

Mr. Crooker: Maybe I will learn from that, Judge.

I might have made the same mistake.

Here is a thing that arises this morning. I didn't discover it personally, but Mr. Joe Moss did. He thinks if those fines are paid and sent in to the Treasury of the United States; that an Act of Congress can't get them back if the indictment is quashed even if on appeal the defendant should prevail.

The Court: I am not familiar with that. As I stated to Mr. Moody, there were only two instances in which I recall there was an appeal and payment made into the Registry of the Court.

That is, however, for you to decide. Mr. Cash had one of the cases and it was a housing case. The other was an insurance man in the same area but a different lawsuit. He

was represented by Douglas MacGregor who was a former [fol. 634] United States District Attorney. If I recall rightly, he paid the fine and appealed from the sentence and I don't know what the mechanics of it were.

Mr. Crooker: In the utmost good faith we made an arrangement to pay it, and it was our purpose and intention until this morning to pay it and I want Mr. Moss to outline to Your Honor and he can give you briefly two cases passed on by the United States Supreme Court that convinced me that high water and acts of Congress and two or three other things can't get the money back.

The Court: Not through the Court of Claims?

Mr. Crooker: I don't mind telling you I never heard of it until this morning, but Mr. Moss has looked into it and I would like to yield in his favor at the moment.

The Court: Well, I didn't grant it with that theory. If I had granted the probation, then there would be some problem.

Mr. Crooker: But I don't want to make a statement even in that motion to suspend which Your Honor has overruled. All I am saying now is we would prefer, much prefer, and we are convinced we can't safely turn that $20,000 in and let it go into the Treasury of the Court.

[fol. 635] The Court: Is that twenty or forty thousand.

Mr. Crooker: I have a profound respect for that much money. We want to file a suit instead. I want to acquaint Your Honor with it. It would be interesting to you to hear Mr. Moss.

The Court: I would be happy to, surely.

Mr. Moss: If the Court please, at the outset I approached this thing on the theory that the appeal is substantial and not frivolous or for purposes of delay only.

The Court: I have a contrary view.

Mr. Moss: I make that statement as a point of personal privilege more than it has bearing on the merits.

In the year 1920—

The Court: Will you give us the citation?

Mr. Moss: Case of the United States of America versus Gettinger, et al., 71 Law Edition 499. I don't have the other citations, but it appears to be 272 U.S. 732, I guess.

[fol. 636] The Court: Our library has the United States Reporter.

Mr. Moss: It was decided in the year 1921—no, it was 1927 by a unanimous Court. The opinion is less than half a page long.

The Court: What is your citation in the Teapot Dome?

Mr. Moss: I frankly do not know. Could I call it over? It is not in point because it is a civil action.

In that case the Court recognized they protested and they stated the procedure.

The Court: If they entered the plea of nolo contendere, they more or less used that as an inducement to get the plea allowed. I think that is your problem as far as what you want to do about it.

Mr. Moss: In view of that, we respectfully request the Court to allow us to supersede the feature which we are sure will be good and sufficient and subject to the approval of any particular authority the Court might want to prove the bail with the supersedeas feature in it. As I understand the statute, it carries interest in the event it is ultimately paid. There is no way anyone could be wrong or hurt by it. I rise to make that request, and that is all I have to say, Your Honor.

[fol. 637] Mr. Crooker: With that prelude, Your Honor, we now want to file simultaneously the joint motion of appeal and joint motion for bail pending appeal, each being filed in duplicate and triplicate copies of each are now handed to the United States District Attorney in Court.

The Court: Are any of those subject to written answer being filed, Mr. Hartman?

Mr. Hartman: I have not seen them, Your Honor.

The Court: I will adjourn about an hour and let you do it if there are any. You look them over and let us know.

Mr. Hartman: All right, sir.

Your Honor, on this motion for bail pending appeal, the Government doesn't object to establishing bail for the defendants, but we do not in making our statement waive our contention that the appeal is frivolous and is made only for the purposes of delay.

Mr. Crooker: We are stating to the Court we desire the supersedeas as to the fine, too, in view of the fact that

in the other motion we filed which is already overruled, says we are ready and willing to pay the fine. I have outlined that.

The Court: Do you desire to file any written pleadings? [fol. 638] Mr. Hartman: Well, Your Honor, I don't see any purpose that we could accomplish by it.

The Court: In the event—what about the supersedeas rather than the payment of the fine? We have overruled it as far as Mr. Lott is concerned.

Mr. Hartman: We take the same position here. We insist on the payment of the fine. I have in connection with criminal cases have had occasion in the past to prepare orders for the Clerk ordering the Clerk to refund the money. I do not understand this suit here in this case undoubtedly is against some agency for repayment of the fine.

Mr. Moss: No, it was in the original Court where the sentence was passed.

Mr. Hartman: We would object to it.

The Court: Very well, I have the motion for bail and oral motion you might say for supersedeas and of course the motion is filed simultaneously; the notice of appeal is filed. There isn't a formal written motion for me not to enforce the payment of the fine at this time.

Mr. Crooker: Your Honor, I believe—let me be as frank as I know how. I believe the motion for bail pending appeal, [fol. 639] I believe it is broad enough to cover—now, I would like to look at it again and ask—I have just looked at Rule 46. I looked at it in my office. Mr. Schwartz's book is here. It just says bail pending appeal can be allowed by the trial Court or the Appellate Court. It doesn't—under such conditions are not going to accept the bail that we will appeal for confinement if it is overruled. I assume if we file a supersedeas we have got the right to do it under Rule 46 of the Rules. It doesn't say anything about supersedeas, but that is the type of bail we propose to file here, Your Honor.

May I ask, I guess everybody here knows but me, has the Judge approved the bail?

Mr. Moss: Would the Court permit me to confer with Mr. Costa a minute?

The Court: Certainly.

Mr. Crooker: Judge, I think Mr. Schwartz has probably found the Rule here. It is 38, Rule 38(a) (3).

The Court: I have a motion here for appeal and a motion for bail has been filed. What is your situation, Mr. Hartman?

Mr. Hartman: Well, are you asking me for any motions that I have or my answers to any of his motions?

[fol. 640] The Court: Answering the question as to bail, whether in the case of Mr. Lott he made a specific motion which I overruled.

Mr. Hartman: Well, sir, we feel these two defendants here should be ordered to pay the fine imposed by the Court and that that not be granted, and then we would move that the defendants be ordered to deposit the amount of the fine with the Clerk of the Court.

So far as the defendants making bail pending the appeal, we do not object, Your Honor, to the bail, but we do not waive our contention that the appeal is frivolous and made only for delay.

The Court: Well, if there is a motion implied or otherwise for delay in payment of the fine, that is overruled.

The motion to grant bail in the amount that now is $5,000 in each instance. Even as I said the other day, in Mr. Lott's case, I feel that this appeal is frivolous and I feel that it is not well taken and it is for the purposes of delay. However, there is a school of thought to the effect that the main idea is to keep the defendant from fleeing the jurisdiction and not ultimately carrying out the judgment of the Court. There is no suspicion in my mind in that situation. I will grant that and allow the bail in the sum of $5,000 each, as to each defendant, but not to the supersedeas in the payment of the fine.

Mr. Crooker: Your Honor, I am not quibbling about this, but here is our situation and I am sure Your Honor will understand it.

[fol. 641] While interest in money is all right and all that sort of thing, I am not going to bother the Court with that. I don't want and I don't believe Your Honor wants us to pay that $20,000 and in the event this bad indictment, the invalidity of it is sustained on appeal,—and I have got lots more confidence than the other fellows have in it—

The Court: Confidence in the invalidity?

Mr. Crooker: In the invalidity of the indictment. I don't want and I don't believe Your Honor wants us to pay that $20,000 and lose it. Could we do this, could we get a cashier's check—

The Court: I expect that is something between you and the Clerk.

Mr. Crooker: Both Rules say it is under such terms and conditions as the Court may impose. Could we get a check from a bank, a sizable bank that isn't going into any trouble, presumably, and deposit it payable to them or indorsed to the Clerk or something, and leave it in the custody of the Clerk.

Now, Rule 38 upon which they call the attention says in the custody, not payment of the fine, into the Government. It looks to me under these cases when you get it into the Treasury you can't get it back under whatever circumstances there may be.

Now, would Your Honor consider and let us find out from Mr. Thomas in the meantime what he does with it? Could [fol. 642] he hold that cashier's check by some bank pending the appeal, and I think it is permissible under the rules if Your Honor imposes that condition on us, we will deposit it. What I am doing is begging.

The Court: I think a provision which—it is sufficiently clear to my mind at least that in the event of the finding that they made a defective indictment that you could get your money back.

Mr. Crooker: The United States Supreme Court said no Court has got the power to make any such record.

The Court: Counsel, that was before the adoption of Federal Rules of Criminal Procedure.

Mr. Crooker: That may be a perfectly good answer, but I don't want to get beat out of $40,000, Judge.

The Court: If there is anything further, I will be available off and on until the 17th day of August, then I am leaving the jurisdiction.

Court will stand adjourned under the Rules.

[fol. 643] Appearance Bond on Appeal of Lee Blocker;

Appearance Bond on Appeal of Lorn D. Frazier;

Appearance Bond on Appeal of H. A. Lott;

Cost Bond on Appeal for Lee Blocker and Lorn D. Frazier, jointly;

Omitted from the printed record pursuant to the designations of counsel as to printing record heretofore copied at pages 1 & 7.

* * * * * * *

IN UNITED STATES DISTRICT COURT

STATEMENT OF POINTS ON APPEAL—Filed 5 day of August 1959

A concise statement of the points on which defendants Lee Blocker and Lorn D. Frazier intend to rely on appeal is as follows:

1.

The Government's whole course of conduct in this case showed clearly that its real purpose was to conceal from—rather than to reveal to—these defendants the essential elements of the offenses with which they were purportedly charged. This being a denial of their rights under the Sixth Amendment, the indictment is fatally defective and cannot [fol. 644] support the conviction and the prison terms imposed on defendants.

2.

The sufficiency of the indictment in this case must be viewed from the standpoint of the whole course of conduct of the Government's Internal Revenue Agents and other prosecutors; and since the record fairly teems with evidence of their following a course of secreting from defendants any and all information as to the essential elements of the offenses with which they were purportedly charged, the indictment is fatally defective.

3.

The indictment is fatally defective in all its counts since it wholly fails to apprise the defendants of the elements of any offense with which they were purportedly charged.

4.

The indictment is fatally defective in all its counts since each count is so vague, indefinite and uncertain that it fails to charge a violation of law, and it does not enable the defendants to know the nature and character of the attempted charge, to make defense thereto or to plead a judgment of acquittal or conviction in bar of further prosecution for the offenses attempted to be charged.

5.

The indictment is fatally defective in all its counts because each count is duplicitous in that in each count the [fol. 645] Government attempts to allege several different offenses.

6.

The indictment is fatally defective in all its counts because each count fails to allege how or in what manner the alleged acts of Lee Blocker and Lorn D. Frazier caused or could have caused any federal income tax deficiency.

7.

The indictment is fatally defective in all its counts because each count fails to allege how or in what manner Lee Blocker and Lorn D. Frazier knew or should have known that acts allegedly done by them resulted or would result in defeating any federal income taxes due.

By Joe S. Moss, By John H. Crooker, Attorney for defendants Lee Blocker and Lorn D. Frazier, Bank of the Southwest Building, Houston 2, Texas.

Certificate of Service (omitted in printing).

[fol. 646]

IN UNITED STATES DISTRICT COURT

CONCISE STATEMENT OF POINTS TO BE RELIED UPON BY DEFENDANT H. A. LOTT ON APPEAL—Filed 11 day of August, 1959

Defendant H. A. Lott intends to rely upon the following points in his appeal of this case:

I.

The indictment does not state facts sufficient to constitute an offense against the United States.

II.

The indictment is fatally defective in all of its counts because each count is duplicitous in that in each count the government attempts to allege several different offenses.

III.

Counts 1 through 5 of the indictment are each insufficient as a matter of law to charge an offense against the United States because these counts fail to form a basis for a plea of double jeopardy as to any one or all of them.

IV.

The indictment is fatally defective in all of its counts since it wholly fails to apprise defendant H. A. Lott of the [fol. 647] elements of any offense with which he was charged.

V.

The indictment fails to charge in any one or all of its counts an offense against the United States with the degree of certainty demanded in a criminal case since each count is so indefinite, vague and uncertain that it does not enable the defendant H. A. Lott to know the nature and cause of the crime charged and fails to inform him of the nature of the accusation in order that he could make a defense thereto.

VI.

The indictment is fatally defective in all of its counts because each count fails to allege how or in what manner the acts of H. A. Lott caused or could have caused any deficiency in the federal income taxes due the government by Farnsworth & Chambers Co., Inc.

VII.

The indictment is fatally defective in all of its counts because each count fails to allege how or in what manner H. A. Lott knew or could have known that the acts allegedly done by him resulted or would have resulted in defeating any federal income tax due the federal government by Farnsworth & Chambers Co., Inc.

[fol. 648]

VIII.

The conspiracy count is insufficient as a matter of law because it does not expressly allege a conspiracy agreement, if any.

IX.

The federal government's conduct in this case clearly establishes the fact that the government did not want to disclose to defendant H. A. Lott the necessary elements of the crimes with which he was charged but deliberately withheld from him the facts necessary to make a defense. Since this abridged H. A. Lott's right under the Sixth Amendment, the indictment is fatally defective and cannot support the conviction and sentence imposed on defendant H. A. Lott.

X.

Under the circumstances of this case the sentence imposed on H. A. Lott is excessive.

Denman Moody, W. V. Ballew, Jr., Attorneys for Defendant H. A. Lott, 16th Flr., Esperson Building, Houston 2, Texas.

Of Counsel: Baker, Botts, Andrews & Shepherd, 16th Flr., Esperson Building, Houston 2, Texas.

[fol. 649] Copies of the foregoing Statement of Points on Appeal have been served in accordance with law upon counsel for the United States of America and counsel for Messrs. Lee Blocker and Lorn D. Frazier.

Denman Moody, Attorney for Defendant H. A. Lott,
16th Flr., Esperson Building, Houston 2, Texas.

Order Extending Time for Filing of Record on Appeal;

Cost Bond on Appeal for H. A. Lott;

Clerk's Certificate;

Omitted from the printed record pursuant to the designations of counsel as to printing record heretofore copied at pages 1 & 7.

* * * * * * *

[fol. 653]

No. 17,888

IN UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

H. A. LOTT, LEE BLOCKER and LORN D. FRAZIER, Appellants,

v.

UNITED STATES OF AMERICA, Appellee.

MOTION TO DISMISS APPEAL—Filed February 26, 1960

Comes Now the United States of America, Appellee in the above-styled and numbered case now pending on the docket of this Court, acting herein by and through William B. Butler, United States Attorney for the Southern District of Texas, and pursuant to Rule 39(a), Federal Rules of Criminal Procedure, moves the Court to dismiss the appeal of the Appellants, H. A. Lott, Lee Blocker and Lorn D. Frazier. As grounds for this motion Appellee shows to the Court that, as the Record on file in this case establishes:

[fol. 654]

I.

This Court does not have jurisdiction of this appeal because the notices of appeal filed by each of the said Appellants were not filed within ten days after the entry of the respective judgments appealed from, as required by Rule 37(a)(2) F.R.Cr.P.

II.

The motions in arrest of judgment filed by Appellants did not have the effect of enlarging the time to file notice of appeal because, although they were filed within 10 days of the entry of the judgment, they were not filed within 5 days after the determination of guilt as required by Rule 34 F.R.Cr.P.

Wherefore, Appellee prays the Court to dismiss this appeal.

William B. Butler, United States Attorney; Fred L. Hartman, Asst. United States Attorney; Myron M. Sheinfeld, Asst. United States Attorney.

[fol. 669]

No. 17,888

In United States Court of Appeals

Fifth Circuit

H. A. Lott, Lee Blocker and Lorn D. Frazier, Appellants,

v.

The United States of America, Appellee.

Appeal From the United States District Court
For the Southern District of Texas

— —

ANSWER OF H. A. LOTT TO GOVERNMENT'S MOTION TO DISMISS APPEAL AND BRIEF IN SUPPORT THEREOF—Filed March 9, 1960

Comes Now H. A. Lott, one of the Appellants in the above entitled and numbered cause, and in answer to the Government's motion to dismiss this appeal, would respectfully show unto the Court as follows:

I.

This Court is not deprived of its jurisdiction over this appeal merely because Lott did not file his motion in arrest of judgment within 5 days of the date upon which the District Court announced its acceptance of Lott's plea of *nolo contendere*. Notwithstanding the Government's novel interpretation of Rule 34 of the Federal Rules of Criminal Procedure, the record clearly reflects that:

1. Sentence was pronounced on June 19, 1959 (R. 551), [fol. 670] and judgment and commitment were entered and filed of record on June 22, 1959 (R. 555).

2. Within five days (on June 23, 1959) Lott's motion in arrest of judgment was filed of record (R. 559).

3. Lott's motion in arrest of judgment was denied by the District Court on July 13, 1959 (R. 569).

4. Within ten days (on July 15, 1959) Lott filed notice of appeal (R. 572-74).

Lott says the foregoing established full and complete compliance with Rules 34 and 37(a)(2) of the Federal Rules of Criminal Procedure, and further satisfied the jurisdictional prerequisites for maintenance of his appeal.

Wherefore, premises considered, Lott respectfully prays the Court to deny Government's motion to dismiss this appeal.

Denman Moody, W. V. Ballew, Jr., Walter E. Workman, Attorneys for H. A. Lott, Appellant.

Of Counsel: Baker, Botts, Andrews & Shepherd, 1600 Esperson Building, Houston 2, Texas.

[fol. 680]

No. 17,888

IN UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

H. A. LOTT, LEE BLOCKER and LORN D. FRAZIER, Appellants,

v.

THE UNITED STATES OF AMERICA, Appellee.

Appeal from the United States District Court
For the Southern District of Texas

ANSWER OF LEE BLOCKER AND LORN D. FRAZIER TO MOTION TO DISMISS APPEAL—Filed March 11, 1960

Come Now Lee Blocker and Lorn D. Frazier, appellants in the above cause, and in answer to appellee's motion to dismiss the appeal state as follows:

I.

This Court has jurisdiction of this appeal because the notice of appeal filed by appellants was filed within the time prescribed by Rule 37(a)(2), Federal Rules of Criminal Procedure.

II.

By the explicit terms of Rule 37(a)(2), the time to file notice of appeal did not expire until 10 days after entry of the order denying the motion to arrest judgment filed by appellants, whether or not the motion was timely filed under Rule 34, since the motion was filed within the 10 days following entry of judgment.

[fol. 681]

III.

The motion to arrest judgment filed by appellants was timely filed under Rule 34, Federal Rules of Criminal Procedure, since it was filed within 5 days after the "determination of guilt" as provided in Rule 34.

IV.

In the alternative, if the Court should hold that the motion to arrest judgment was not effective as such, it should be construed as a motion to the District Court under Rule 12(b)(2), Federal Rules of Criminal Procedure, to notice the failure of the indictment to charge an offense and lack of jurisdiction, and the appeal should be regarded as having been taken from the denial of such motion.

V.

In the further alternative, if the Court should hold that the motion to arrest judgment was not effective as such, it should be construed as a motion to vacate sentences under 28 U.S.C. §2255, and the appeal should be regarded as having been taken from the denial of such motion.

Wherefore, appellants Lee Blocker and Lorn D. Frazier pray the Court to deny the motion to dismiss this appeal.

Joe S. Moss, C. W. Wellen, William M. Ryan, John H. Crooker, Attorneys for Appellants.

[fol. 695]

IN UNITED STATES COURT OF APPEALS

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—March 16, 1960 (omitted in printing)

[fol. 696]

IN UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 17888

H. A. LOTT, LEE BLOCKER and LORN D. FRAZIER, Appellants,

versus

UNITED STATES OF AMERICA, Appellee.

Appeals from the United States District Court
For the Southern District of Texas

OPINION—June 20, 1960

Before Cameron and Jones, Circuit Judges, and Wright, District Judge.

Jones, Circuit Judge: The three appellants and two others were charged, in the first count of a five-count indictment, with attempting to evade and defeat income taxes of a named corporation for the year 1951. Three other counts charged the same offense for each of the years 1952, 1953 and 1954. A fifth count of the indictment charged a con-
[fol. 697] spiracy to evade and defeat the corporation's income tax for the years 1951 to 1954, inclusive. The appellants, two of them on March 17, 1959, and the third on March 20, 1959, by leave of court, withdrew pleas of not guilty and tendered pleas of nolo contendere. These pleas were accepted by the court. Sentencing was deferred. During the period of deferment the judge, who had permitted the filing of and had accepted the nolo contendere pleas, presided over the trial of the two others who had been jointly indicted with the appellants. At this trial one of those tried was acquitted and the jury was unable to agree upon a verdict as to the other. Thereafter, on June 19, 1959,

the court, with the same judge presiding, called the appellants before him for sentencing. The appellant Blocker was sentenced to three years imprisonment. The appellants Frazier and Lott were each sentenced to two years imprisonment. A fine of $20,000 was imposed upon each appellant. The sentences were pronounced from the bench on June 19, 1959, and the formal written judgments were filed on June 22, 1959. On the following day, June 23, 1959, motions in arrest of judgment were filed by each appellant. These motions were denied on July 13, 1959. The appellant Lott filed notice of appeal on July 15, 1959, and the appellants Blocker and Frazier filed notice of appeal on July 17, 1959.

Although stated in different language, the claims of error made by the appellant Lott and those of the appellants Blocker and Frazier are substantially the same. It is contended that the indictments are insufficient: that the court was without jurisdiction to impose sentences on the pleas [fol. 698] of nolo contendere after hearing the evidence adduced at the trial of the others who were jointly indicted; and that the sentences were beyond the jurisdiction of the court. These questions going to the merits are not reached.

The United States has moved to dismiss the appeals on the ground that the notices of appeal were not filed within ten days after the entry of the judgments appealed from as required by Rule 37(a)(2), Fed. Rules Crim. Proc. 18 U.S.C.A.; and that the motions in arrest of judgment did not enlarge the time for giving notice of appeal because, although filed within ten days of the entry of the judgment, the motions were not filed within five days after the determination of guilt as required by Rule 34, Fed. Rules Crim. Proc. 18 U.S.C.A. The appellants suggest that because the Government has designated portions of the record to be brought up on appeal and has filed a brief on the merits its motion to dismiss ought not be entertained. But lack of jurisdiction can be raised at any time and the court is under a duty to notice absence of jurisdiction even though it is not raised by a party. Rule 12(b)(2) Fed. Rules Crim. Proc. 18 U.S.C.A.

The appellants are insistent that under Rule 37(a)(2)[1] an appeal may be taken within ten days after the entry of an order denying a motion in arrest of judgment if such [fol. 699] motion was filed within ten days after judgment even though the motion in arrest of judgment was filed out of time and the notice of appeal was not filed until more than ten days had elapsed after judgment. This, the appellants say, is the clear, explicit and unambiguous meaning of Rule 37(a)(2) notwithstanding the provision of Rule 34[2] requiring the filing of a motion in arrest of judgment within five days after determination of guilt. Support for the appellants' position is found in *Lujan* v. *United States*, 10th Cir. 1953, 204 F. 2d 171, where the proposition for which appellants contend is adopted and applied. In the Lujan case the motion was for a new trial under Rule 33 Fed. Rules Crim. Proc. 18 U.S.C.A. rather than a motion for arrest of judgment such as is before us. We do not think this difference would call for a distinction.

The doctrine of Lujan was expressly rejected in *United States* v. *Berlone*, 3rd Cir. 1957, 249 F. 2d 156. There the defendant was convicted on March 28, 1957, sentenced in open court on April 12, 1957, and a judgment of sentence and commitment was entered on April 18, 1957. On April 22, 1957, the defendant filed motions for a new trial and in arrest of judgment. On August 9, 1957, an order was entered denying the motions. On August 19, 1957, the defendant gave notice of appeal from the judgment and sentence of April 18, 1957, and from the August 19, 1957, order. [fol. 700] The motions were filed within ten days after the entry of the judgment as is the case here. The appeal was

[1] An appeal by a defendant may be taken within ten days after entry of the judgment or order appealed from, but if a motion for new trial or in arrest of judgment has been made within the 10-day period an appeal from a judgment of conviction may be taken within 10 days after entry of the order denying the motion. Rule 37(a)(2) Fed. Rules Crim. Proc. 18 U.S.C.A.

[2] The court shall arrest judgment if the indictment or information does not charge an offense or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within 5 days after determination of guilt or within such further time as the court may fix during the 5-day period. Rule 34, Fed. Rules Crim. Proc. 18 U.S.C.A.

taken within ten days after the entry of the order denying the motions as is the case here. The motions were not timely filed as was the case in Lujan, and as is the case here unless, of course, the entry of the pleas of nolo contendere did not result in determinations of guilt within the meaning of Rule 34. In the Bertone case it was held that the appeal was not taken in time. The same conclusion, upon a similar factual situation, was reached in *Marion* v. *United States*, 9th Cir. 1948, 171 F. 2d 185, cert. den. 337 U. S. 944, 69 S. Ct. 1500, 93 L. Ed. 1747.

We are in agreement with the Third Circuit that the rule announced in the Lujan case is unsound and ought not to be followed. To hold, as Lujan holds, that the untimely filing of a motion for a new trial or in arrest of judgment will toll the running of the time in which an appeal may be taken, although the motion could not be considered on its merits, produces a result which we think was not intended. It does not seem that the Supreme Court, in framing the rules, had the design of permitting a convicted defendant to file out of time a motion which the court could not have given him leave to file after the time for filing had expired, and so obtain an extension of the time for taking an appeal even though the court itself was powerless to grant such an extension.

[fol. 701] This Court has, heretofore considered the question and has adopted the rule announced in Bertone, citing that opinion with approval. This Court has succinctly stated the principle in this language:

> "To extend the time for taking an appeal, a motion for new trial must be both (a) timely made under Rule 33 and (b) made within ten days after entry of the judgment of conviction under Rule 37(a)(2)." *O'Neal* v. *United States*, 5th Cir. 1959, 264 F. 2d 809. Cf. *Massicot* v. *United States*, 5th Cir. 1958, 254 F. 2d 58.

When an act is required or allowed to be done at or within a specified time the court for cause shown may . . . order the period enlarged . . . or . . . permit the act to be done after the expiration of the specified period . . . but the court may not enlarge the period for taking any action under Rules 33, 34 and 35, except as otherwise provided in those rules, or the period for taking an appeal. Rule 45(b), Fed. Rules Crim. Proc. 18 U.S.C.A.

If the pleas of nolo contendere and the acceptance of them were determinations of guilt it follows that the motions in arrest of judgment were filed too late, the time for appeal was not tolled, and the appeals were not taken in time. If, on the other hand there was no determination of guilt, as that phrase is used in Rule 34, until the judgment and sentence, then the motions were timely made and the appeals were timely taken.

After a jury trial a determination of guilt has been made when a verdict of guilty has been returned by the jury and accepted by the court. *Brown* v. *United States*, 9th Cir. 1952, 198 F. 2d 999; *Finn* v. *United States*, 4th Cir. 1958, 256 F. 2d 304. A determination of guilt has been made when a plea of guilty has been entered. *Marteney* v. *United States*, 10th Cir. 1954, 216 F. 2d 760. The appellants urge that a plea of nolo contendere is a plea in avoidance without a confession and that it does not result in a determination of guilt. It is, so appellants say, only an implied confession [fol. 702] of guilt, a mere statement of unwillingness to contest, and no more. The federal courts, however, have long held that the legal effect of a plea of nolo contendere is the same as a plea of guilty for all purposes so far as regards proceedings on the indictment. *United States* v. *Hartwell*, Cir. Ct. Mass. 1869, 3 Cliff. 221, 26 Fed. Cas. 196. A leading case is *United States* v. *Lair*, 8th Cir. 1912, 195 F. 47, where it is said:

> "In fact, the defendant admitted that he committed the offense charged within that district; for his plea of nolo contendere is in effect a plea of guilty to every essential element of the offense well pleaded in the charge against him, and warrants his conviction thereof without more." 195 F. 47, 52.

On the question of guilt or innocence, the Supreme Court has held that the plea of nolo contendere is as conclusive as a plea of guilty would have been, and after such a plea nothing is left but to render judgment. *United States* v. *Norris*, 281 U. S. 619, 50 S. Ct. 922, 74 L. Ed. 1076. See also *Hudson* v. *United States*, 272 U. S. 451, 47 S. Ct. 127, 71 L. Ed. 347; *United States* v. *Frankfort Distillers*, 324 U. S.

293, 65 S. Ct. 661, 89 L. Ed. 951. The well settled principle that, for the purposes of the case, the plea of nolo contendere is the equivalent of a plea of guilty has been recognized and applied by this Court. *Farnsworth* v. *Zerbst*, 5th Cir. 1938, 97 F. 2d 255. Cf. *Piassick* v. *United States*, 5th Cir. 1958, 253 F. 2d 658; *Mickler* v. *Fahs*, 5th Cir. 1957, 243 F. 2d 515. The state courts, generally, are in accord. Annot. 152 A.L.R. 253; 4 Wharton Criminal Law and Procedure [fol. 703] 772, § 1903; Lenvin and Myers, Nolo Contendere: Its Nature and Implications, 51 Yale Law J. 1255. The rule being as it is, it follows that the determination of guilt of the appellants was made when their pleas of nolo contendere were tendered to and accepted by the court.

However may be the law as to when, in the usual case, there is a determination of guilt for the measuring of the time for filing a Rule 34 motion, the appellants say that there was not, in fact, any determination of guilt at the time of the pleas. That determination, say the appellants, was not made until after the trial of the other defendants and the determination of guilt was made by the court, and was based upon the evidence heard by the court at the trial rather than upon the pleas of nolo contendere. Upon this theory the time within which the motions in arrest of judgment could be filed would begin at the time the sentences were imposed. In considering the contention of the appellants that they were sentenced upon a determination of guilt based upon the evidence at the trial of the other defendants rather than upon their pleas of nolo contendere, a look at the record becomes desirable. What happened is this: during the proceedings for sentencing the court heard statements of counsel for the appellants seeking mitigation of punishment. In these statements references were frequent to matters which transpired at the trial of the other defendants. It was brought out that counsel for the appellants had a representative at the trial, taking notes, and reporting to counsel so that they knew, in the words of one of the attorneys "exactly what was testified, in substance." Two of [fol. 704] the three appellants made statements on behalf of themselves. Character witnesses numbering five, seven, and five, for the respective appellants, testified. At the conclusion of the hearing the court stated, "I have found each

guilty of the felonies as contained in the grand jury indictment." Then followed an oral pronouncement by the court of the sentences. This hearing was on June 19, 1959. On June 22, 1959, the court entered, as to each appellant, a formal judgment and commitment. From them we quote:

> "It is adjudged that the defendant has been convicted upon his plea of nolo contendere of the offense of . . . and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,
>
> "It is adjudged that the defendant is guilty as charged and convicted."

We need not consider whether the judgment was the oral pronouncement of sentence or the formal writing. Cf. *Pollard* v. *United States*, 352 U. S. 354, 77 S. Ct. 481, 1 L. Ed. 2d 393; *United States* v. *Hark*, 320 U. S. 531, 64 S. Ct. 359, 88 L. Ed. 290; *Patterson* v. *United States*, 5th Cir. 1950, 183 F. 2d 687; *Spriggs* v. *United States*, 9th Cir. 1955, 225 F. 2d 865. In neither the oral sentence nor the formal judgment does it appear that the determination of guilt is based upon the trial of the other defendants. Any such conclusion is negatived by recital in the formal judgment that "the defendant has been convicted upon his plea of nolo contendere." We see no merit in this contention of the appellants.

[fol. 705] We can find no principle that would sustain the appellants in their contention that they have given and filed a notice of appeal from the judgments of conviction and sentence within the time prescribed by the applicable rule.

The appellants ask that we treat the notices of appeal as being from the order denying the motions in arrest of judgment in the event we hold that there were no timely notices given of appeals from the judgments of conviction and sentence. An order overruling a motion in arrest of judgment is, it seems, an appealable order. *Sutton* v. *United States*, 5th Cir. 1946, 157 F. 2d 661. The difficulty with the appellants' proposal is that, since the motion was not timely filed, the district court had no jurisdiction of the motion

and all that this Court could do would be to direct that the order denying the motion be affirmed for want of jurisdiction. Such an ineffectual result need not be further considered.

It is contended by the appellants that if their appeal from the judgment was not taken in time, we should treat the motion in arrest of judgment as a motion to vacate the sentence under 28 U.S.C.A. § 2255, and then treat the notice of appeal as being directed to the court's order as denying Section 2255 relief. The Tenth Circuit, in a case where a motion in arrest of judgment was filed too late, treated the motion as one to vacate. In its opinion it was said:

> "The 'motions in arrest of judgment', having been filed more than five days after determination of guilt, were untimely under Rule 34 of the Federal Rules of [fol. 706] Criminal Procedure, 18 U.S.C.A., and the government takes the preliminary position that the trial court was without authority to treat the pleadings as motions to vacate under Section 2255 for the purpose of considering the legal questions raised by the motions. Section 2255 specifically authorizes 'A prisoner in custody under sentence of a court * * * claiming * * * that the court was without jurisdiction to impose such sentence * * * may move the court which imposed the sentence to vacate, set aside or correct the sentence * * * at any time.' Treated as motions to vacate, the pleadings were undoubtedly timely to challenge the legal sufficiency of the counts in the indictment to state a federal offense. Having in mind that it is the content of the pleadings and not the label which determines their nature and effect, we can see no impropriety in the court's treatment of the pleadings as motions to vacate under Section 2255." 216 F. 2d 760, 762.

The Fourth Circuit adopted the doctrine in *Finn* v. *United States*, 4th Cir. 1958, 256 F. 2d 304, and used it as a means for reaching the merits of the question presented by the motion and the ruling upon it.

The appellants are not presently in confinement and recognize that 2255 relief is not available to anyone who is not

in custody under sentence of a court. *Heflin* v. *United States*, 358 U. S. 415, 79 S. Ct. 451, 3 L. Ed. 2d 407. They would have us surmount this barrier by following the pronouncement of the Ninth Circuit in *Black* v. *United States*, 9th Cir. 1959, 269 F. 2d 38, cert. den. 361 U. S. 938, 80 S. Ct. 209, 4 L. Ed. 2d 357. Black had attempted to take an appeal [fol. 707] and, under Rule 38(a)(2), had elected not to begin serving his sentence. The appeal was filed out of time. He later filed a Section 2255 motion and attempted, though not in custody, to appeal from an order denying relief. It was held that since the 2255 motion cannot be maintained while there is a pending appeal in good standing, the appeal was deemed abandoned by the filing of the 2255 motion. Since Black would be entitled to freedom from custody only if he had an appeal pending from his conviction and sentence, he was regarded as being in technical custody after the filing of his 2255 motion for the purpose of conferring 2255 jurisdiction. In this case, the appellants assert, they should be regarded as being in technical custody for the purpose of allowing jurisdiction over their Rule 34 motions which they would have us treat as being made under Section 2255. It might be observed that, when the Rule 34 motions were filed, the time for appeal had not run and the appellants could not claim that they were then in technical, any more than actual, custody.

We have mapped but a part of the tortuous road over which the appellants would lead us in seeking to sustain our jurisdiction to review this case. In going with them as far as the foregoing outline would take us, it would be necessary to hold that the Rule 34 motions were not Rule 34 motions at all but, in effect, Section 2255 motions; and that the appellants, although not in custody in any real sense,[1] [fol. 708] are in technical custody so as to permit the court to entertain the mislabeled 2255 motion. But could we travel with appellants thus far we would then become confronted with the question as to whether we may treat the notices of appeal as being from the order denying the Rule 34 motions treated as Section 2255 motions. The notices of appeal pur-

[1] The notices of appeal state that the appellants are at liberty on bail.

port to be only from the judgments and sentences. We do not have in the notices of appeal an inclusion of the orders on the motions as was the case in *Martency* v. *United States*, *supra*. Although it is provided that a court shall not be required to entertain a second or successive motion under Section 2255, it may, in its discretion, do so. *Wells* v. *United States*, 5th Cir. 1954, 210 F. 2d 112.

To remove any question as to whether a 2255 motion might be filed and to avoid circuity of actions in resolving the questions, it might be well to review, to the extent permissible, the questions which the appellants assign as error. In the case of *Heflin* v. *United States*, *supra*, the Supreme Court treated a motion under Section 2255 as a motion under Rule 35, Fed. Rules Crim. Proc. 18 U.S.C.A., and held that although there was no timely application for certiorari to review an order on a Rule 35 motion, the Supreme Court would, in order to avoid a circuity of actions, dispense with the requirements of its Rule 22(2). But we are not authorized to dispense with the rules that govern our jurisdiction. On the contrary, we are expressly prohibited from extending the time for taking appeals. Rule 45(b) Fed. Rules Crim. Proc. 18 U.S.C.A. So also the Rules require that the notice of appeal shall set forth, among other [fol. 709] things, "a concise statement of the judgment or order, giving its date, and any sentence imposed." Rule 37(a)(1), Fed. Rules Crim. Proc. 18 U.S.C.A. We cannot treat an express reference in the notice of appeal to a judgment and sentence of a specified date as evidencing an appeal from an order upon a motion subsequently filed, no matter how the motion may be treated. Cf. *Martin* v. *United States*, 10th Cir. 1959, 263 F. 2d 516; *Jacobanis* v. *United States*, 1st Cir. 1958, 256 F. 2d 485.

We reach, finally, the conclusion that the jurisdiction of this Court has not been invoked by timely notices of appeal. So concluding we dismiss the appeals without consideration of the other questions which the appellants have asked us to decide. It would not be appropriate to suggest whether, and if so how, those questions may be hereafter raised.

The appeals are

Dismissed.

CAMERON, Circuit Judge, Dissenting.

[fol. 710]

IN UNITED STATES COURT OF APPEALS

No. 17888

H. A. LOTT, LEE BLOCKER and LORN D. FRAZIER,

versus

UNITED STATES OF AMERICA.

JUDGMENT—June 20, 1960

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Texas, and on the motion filed by appellee on February 26, 1960 to dismiss the appeals, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the appeals in this cause be, and the same are hereby, dismissed.

"Cameron, Circuit Judge, Dissenting."

[fol. 714]

IN UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 17,888

H. A. LOTT, LEE BLOCKER and LORN D. FRAZIER, Appellants,

versus

UNITED STATES OF AMERICA, Appellee.

ORDER STAYING MANDATE—Filed July 13th, 1960

On Consideration of the Application of the appellants in the above numbered and entitled cause for a stay of the

mandate of this Court therein, to enable appellants to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It Is Ordered that the issue of the mandate of this Court in said cause be and the same is stayed for a period of thirty days from June 20, 1960; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from June 20, 1960 there shall be filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that certiorari petition and record have been filed. It is further ordered that the Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from June 20, 1960, unless the above-mentioned certificate shall be filed with the Clerk of this Court within that time.

Warren L. Jones, United States Circuit Judge.

[fol. 715]

UNITED STATES OF AMERICA

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

CLERK'S CERTIFICATE

I, Edward W. Wadsworth, Clerk of the United States Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 650 to 714, next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 17888, wherein H. A. Lott, Lee Blocker and Lorn D. Frazier, are Appellants, and United States of America is Appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record, numbered from 1 to 649, are identical with the printed

record upon which said cause was heard and decided in the said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Court of Appeals at my office in the City of New Orleans, Louisiana, in the Fifth Circuit this 13th day of July, A. D., 1960.

Edward W. Wadsworth, Clerk, United States Court of Appeals for the Fifth Circuit; By Clara R. James, Chief Deputy Clerk.

[Seal]

[fol. 716]

SUPREME COURT OF THE UNITED STATES

No. 238, October Term, 1960

H. A. LOTT, et al., Petitioners,

vs.

UNITED STATES.

ORDER ALLOWING CERTIORARI—October 10, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.